

# **EXHIBIT 1**

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13 CEDARCRESTONE, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 ORACLE AMERICA, INC., a Delaware  
18 corporation, and ORACLE  
19 INTERNATIONAL CORPORATION, a  
20 California corporation,

21 Plaintiffs,

22 v.

23 CEDARCRESTONE, INC., a Delaware  
24 corporation,

25 Defendant.

26 Case No. CV-12-4626

27 DEFENDANT CEDARCRESTONE, INC.'S  
28 ANSWER TO COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF  
AND COUNTERCLAIMS

29 **DEMAND FOR JURY TRIAL**

30 Date Filed: September 5, 2012

31 Trial Date: None Set

32 CEDARCRESTONE, INC., a Delaware  
33 corporation,

34 Counter-claimant,

35 v.

36 ORACLE AMERICA, INC., a Delaware  
37 corporation, and ORACLE  
38 INTERNATIONAL CORPORATION, a  
39 California corporation,

40 Counter-defendants.

1           Defendant CedarCrestone, Inc. ("CedarCrestone") hereby responds to the Complaint filed  
2 by Plaintiffs Oracle America, Inc. ("Oracle America") and Oracle International Corporation  
3 ("OIC") (together "Oracle") as follows:

4 **I. INTRODUCTION**

5       1. CedarCrestone admits that, prior to Oracle's pretextual termination of its contracts  
6 with CedarCrestone, it had been an Oracle Platinum Partner that provided services to Oracle  
7 licensees on its own and in conjunction with Oracle. CedarCrestone was also an Oracle licensee  
8 itself. CedarCrestone's services to Oracle licensees included consulting and advisory services  
9 related to PeopleSoft and Oracle E-Business Suites ("EBS") applications, hosting and  
10 management of PeopleSoft and EBS applications, and services related to tax and regulatory  
11 support for Oracle's PeopleSoft licensees who are using versions of PeopleSoft applications for  
12 which Oracle generally no longer provides tax and regulatory updates or who no longer have a  
13 maintenance or support contract with Oracle that includes tax or regulatory updates.

14 CedarCrestone denies that it engaged in any "misappropriation" or "stealing" of any Oracle  
15 intellectual property, any unfair competition against Oracle, or any wrongdoing of any kind.  
16 With respect to the remaining allegations in paragraph 1, CedarCrestone lacks knowledge or  
17 information sufficient to form a belief to admit or deny those allegations, and on that basis denies  
18 those allegations.

19 **II. THE PARTIES**

20       2. CedarCrestone lacks knowledge or information sufficient to form a belief to admit  
21 or deny the allegations in paragraph 2, and on that basis denies those allegations.

22       3. CedarCrestone lacks knowledge or information sufficient to form a belief to admit  
23 or deny the allegations in paragraph 3, and on that basis denies those allegations.

24       4. Admitted.

25 **III. JURISDICTION**

26       5. This paragraph consists of legal conclusions to which no response is required.

27       6. This paragraph consists of legal conclusions to which no response is required.

28       7. This paragraph consists of legal conclusions to which no response is required.

1       8.     CedarCrestone denies it has committed any wrongful acts, intentional or  
2 otherwise, aimed at Oracle, or that anything CedarCrestone may have done has caused any harm  
3 to Oracle. CedarCrestone is not contesting that this Court has personal jurisdiction over it with  
4 respect to this case. The remaining statements in paragraph 8 consist of legal conclusions to  
5 which no response is required.

6 **IV. VENUE**

7       9.     This paragraph consists of legal conclusions to which no response is required.  
8 CedarCrestone is not contesting that this judicial District is a proper venue for this action.

9       10.    CedarCrestone denies it has committed any wrongful acts, intentional or  
10 otherwise, aimed at Oracle, or that anything CedarCrestone may have done has caused any harm  
11 to Oracle. CedarCrestone is not contesting that this judicial District is a proper venue for this  
12 action. The remaining statements in paragraph 10 consist of legal conclusions to which no  
13 response is required.

14 **V. INTRADISTRICT ASSIGNMENT**

15       11.    CedarCrestone admits that Oracle has asserted a claim for copyright infringement.  
16 The remaining statements in paragraph 11 consist of legal conclusions to which no response is  
17 required.

18 **VI. FACTUAL ALLEGATIONS**

19       12.    CedarCrestone admits that Oracle develops, manufactures, markets, distributes,  
20 and services database, middleware, and applications software programs. With respect to the  
21 remaining allegations in paragraph 12, CedarCrestone lacks knowledge or information sufficient  
22 to form a belief to admit or deny those allegations, and on that basis denies those allegations.

23       13.    CedarCrestone lacks knowledge or information sufficient to form a belief to admit  
24 or deny the allegations in paragraph 13, and on that basis denies those allegations.

25       14.    CedarCrestone admits that it entered into the identified contracts with Oracle on  
26 the stated dates. Except to the extent admitted above, CedarCrestone denies the allegations in this  
27 paragraph.

28

1       15. CedarCrestone admits that, by a letter dated September 4, 2012, Oracle purported  
2 to terminate its contracts with CedarCrestone. Except to the extent admitted above,  
3 CedarCrestone denies the allegations in this paragraph.

4       16. CedarCrestone admits that its OPN Agreement with Oracle contained the language  
5 quoted in paragraph 16. The remainder of this paragraph consists of legal conclusions to which  
6 no response is required.

7       17. CedarCrestone admits that its OPN Agreement with Oracle contained the language  
8 quoted in paragraph 17. The remainder of this paragraph consists of legal conclusions to which  
9 no response is required.

10      18. CedarCrestone admits that Oracle's "Ethics Code" contained the language quoted  
11 in paragraph 18. The remainder of this paragraph consists of legal conclusions to which no  
12 response is required.

13      19. CedarCrestone admits that Oracle's "Ethics Code" contained the language quoted  
14 in paragraph 19. The remainder of this paragraph consists of legal conclusions to which no  
15 response is required.

16      20. CedarCrestone admits that Oracle's "Ethics Code" contained the language quoted  
17 in paragraph 20. The remainder of this paragraph consists of legal conclusions to which no  
18 response is required.

19      21. CedarCrestone lacks knowledge or information sufficient to form a belief to admit  
20 or deny the allegations in paragraph 21, and on that basis denies those allegations.

21      22. CedarCrestone admits the allegations in this paragraph, other than Oracle's claim  
22 that a customer who did not choose to purchase support services from CedarCrestone inevitably  
23 would purchase such services from Oracle, which allegation CedarCrestone denies. For many  
24 customers who use older versions of PeopleSoft applications, the tax and regulatory support and  
25 updates offered by Oracle are not even compatible with those customers' software. For other  
26 customers, the tax and regulatory support and updates they need are not offered by Oracle or,  
27 when they are offered, they are offered only as part of a larger maintenance and support offering  
28 that exceeds the scope of the client's needs. Accordingly, Oracle does not offer services that are a

1 viable competitive alternative, much less the only such alternative, for customers who require tax  
2 and regulatory services such as those previously offered by CedarCrestone.

3       23.     CedarCrestone admits that its proposal to the Oklahoma City Municipal Facilities  
4 Authority and its August 19, 2011 letter to Oracle contained the language quoted in paragraph 23.  
5 CedarCrestone further admits it has downloaded Oracle support materials from Oracle's website,  
6 which are freely available to Oracle licensees, as it was (i) licensed or otherwise permitted to do  
7 by Oracle; (ii) permitted to do under the client's license with Oracle; and/or (iii) in the case of  
8 George Weston Bakeries and as disclosed to Oracle, acting as an agent for George Weston  
9 Bakeries pursuant to a written contract, under which George Weston Bakeries was required to  
10 have an active support contract with and license from Oracle which made it eligible to receive  
11 Oracle tax and regulatory updates. Except to the extent admitted above, CedarCrestone denies  
12 the allegations in this paragraph.

13       24.     CedarCrestone admits that George Weston Bakeries was its customer and that its  
14 website listed George Weston Bakeries as a "Client Success" as of September 4, 2012.  
15 CedarCrestone further admits that its website contained the language quoted in paragraph 24  
16 regarding its development services. Except to the extent admitted above, CedarCrestone denies  
17 the allegations in this paragraph.

18       25.     Denied.

19       26.     CedarCrestone denies that the relevant PeopleSoft licenses all contain similar such  
20 restrictions. While it lacks knowledge or information sufficient to form a belief to admit or deny  
21 the allegations in paragraph 26 as to all of the relevant PeopleSoft licenses, and on that basis  
22 denies those allegations, CedarCrestone is aware that PeopleSoft licenses drafted and executed in  
23 the 1990s are substantially different than more recent, or current, PeopleSoft licenses.

24       27.     CedarCrestone admits it is familiar with the terms of its own licenses with Oracle,  
25 but denies that it is generally familiar with PeopleSoft licenses. CedarCrestone has never seen,  
26 and accordingly lacks sufficient information to admit or deny any allegations regarding the  
27 content of, most of the relevant PeopleSoft licenses. Even as to those PeopleSoft licenses  
28 CedarCrestone has reviewed, those licenses and their terms vary significantly depending on when

1 they were drafted and executed, and all such PeopleSoft licenses that CedarCrestone has reviewed  
2 in part contain a confidentiality clause that bars the licensee from sharing the entire license with  
3 third parties. CedarCrestone admits that the language quoted in paragraph 27 appears in its  
4 proposal to the Oklahoma City Municipal Facilities Authority. Except to the extent admitted  
5 above, CedarCrestone denies the allegations in this paragraph.

6       28.     CedarCrestone admits that the language quoted in paragraph 28 appears in its  
7 October 2009 proposal to the Tucson Unified School District. Except to the extent admitted  
8 above, CedarCrestone denies the allegations in this paragraph.

9       29.     Denied.

10      30.     CedarCrestone admits that the Tucson Unified School District purchased support  
11 services from CedarCrestone after receiving CedarCrestone's proposal. Except to the extent  
12 admitted above, CedarCrestone denies the allegations in this paragraph.

13      31.     Denied.

14      32.     CedarCrestone admits that the language quoted in paragraph 32 appears in the two  
15 proposals at issue. Except to the extent admitted above, CedarCrestone denies the allegations in  
16 this paragraph.

17      33.     CedarCrestone admits that the language quoted in paragraph 33 appears in its  
18 proposal to the Oklahoma City Municipal Facilities Authority. Except to the extent admitted  
19 above, CedarCrestone denies the allegations in this paragraph.

20      34.     CedarCrestone denies that any of its statements in its proposal to the Oklahoma  
21 City Municipal Facilities Authority was either false or misleading, or that CedarCrestone  
22 proposed to engage in services that were unauthorized under its or its clients' agreements with  
23 Oracle. CedarCrestone further denies that it ever claimed, in that proposal or anywhere, that its  
24 licenses with Oracle provided immunity for intellectual property infringement. CedarCrestone  
25 admits that the quoted language in paragraph 34 appears in Oracle's Ethics Code. Except to the  
26 extent admitted or specifically denied above, CedarCrestone denies the allegations in this  
27 paragraph.

28

**First Claim for Relief**  
**Copyright Infringement**  
**(Claim by OIC)**

35. This paragraph does not state any facts requiring an admission or denial.

CedarCrestone reasserts and hereby incorporates by reference its responses to the preceding paragraphs of the Complaint above as though fully set forth herein.

36. This paragraph consists of legal conclusions to which no response is required. To the extent the paragraph makes factual allegations regarding Oracle's registration of its purported copyrights, CedarCrestone lacks knowledge or information sufficient to form a belief to admit or deny those allegations, and on that basis denies those allegations.

37. This paragraph consists of legal conclusions to which no response is required. To the extent the paragraph makes factual allegations, CedarCrestone lacks knowledge or information sufficient to form a belief to admit or deny those allegations, and on that basis denies those allegations.

38. This paragraph consists of legal conclusions to which no response is required. To the extent the paragraph makes factual allegations, CedarCrestone lacks knowledge or information sufficient to form a belief to admit or deny those allegations, and on that basis denies those allegations. To the extent this paragraph alleges that CedarCrestone infringed any Oracle copyrights, CedarCrestone denies that allegation.

39. Denied.

40. Denied.

41. Denied.

42. This paragraph consists of legal conclusions to which no response is required. To the extent the paragraph makes factual allegations, CedarCrestone denies them.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

**Second Claim for Relief**  
**Breach of Contract**  
**(Claim by Oracle America)**

47. This paragraph does not state any facts requiring an admission or denial.

CedarCrestone reasserts and hereby incorporates by reference its responses to the preceding paragraphs of the Complaint above as though fully set forth herein.

48. CedarCrestone admits that it entered into the OPN Agreement with Oracle and that some iterations of the OPN Agreement purported to incorporate Oracle's "Ethics Code." CedarCrestone's agreements with Oracle speak for themselves, and the meaning of their terms is a legal question.

49. CedarCrestone admits that it entered into the FUDA with Oracle and that some iterations of the FUDA purported to incorporate Oracle’s “Ethics Code.” CedarCrestone’s agreements with Oracle speak for themselves, and the meaning of their terms is a legal question.

50. This paragraph consists of legal conclusions to which no response is required. To the extent the paragraph makes factual allegations, CedarCrestone lacks knowledge or information sufficient to form a belief to admit or deny those allegations, and on that basis denies those allegations.

51. Denied.

**52. Denied.**

**53. Denied.**

54. Denied.

55. Denied.

**Third Claim for Relief**

56. This paragraph does not state any facts requiring an admission or denial.

CedarCrestone reasserts and hereby incorporates by reference its responses to the preceding paragraphs of the Complaint above as though fully set forth herein.

57. Denied.

58. Denied.

1       59. CedarCrestone admits that it entered into the OPN Agreement and FUDA, and that  
2 some iterations of those contracts purport to incorporate Oracle’s “Ethics Code.”  
3 CedarCrestone’s agreements with Oracle speak for themselves, and the meaning of their terms is  
4 a legal question. With respect to the remaining factual allegations in this paragraph,  
5 CedarCrestone lacks knowledge or information sufficient to form a belief to admit or deny those  
6 allegations, and on that basis denies those allegations.

7 | 60. Denied.

8 | 61. Denied.

9        62. CedarCrestone admits that the OPN Agreement and FUDA identify Oracle as  
10      being located in Redwood City, California and Redwood Shores, California, respectively.  
11      CedarCrestone denies the remaining factual allegations in this paragraph.

12 | 63. Denied.

13 64. This paragraph states legal conclusions to which no response is required.

## **PRAYER FOR RELIEF**

16 Oracle's Prayer for Relief sets forth the statement of relief requested by Oracle, to which  
17 no response is required. CedarCrestone denies that Oracle is entitled to any of the requested relief  
18 from CedarCrestone and denies any factual allegations contained in the Prayer for Relief.

## **GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

21       65. CedarCrestone denies each and every allegation of the Complaint not expressly  
22 admitted herein. CedarCrestone further denies that it has violated the law and denies that it has  
23 injured or damaged Oracle in any manner or amount whatsoever or at all, or that Oracle has  
24 sustained or will sustain injuries or damages by reason of any act, omission or fault on the part of  
25 CedarCrestone, its agents, servants or employees. By alleging the Affirmative Defenses set forth  
26 below, CedarCrestone is not agreeing or conceding that it has the burden of proof on any of the  
27 issues raised in these defenses. All such defenses are pled in the alternative, and do not constitute  
28 an admission of liability or that Oracle is entitled to any relief whatsoever.

**FIRST AFFIRMATIVE DEFENSE**  
*(Failure to Provide Notice and an Opportunity to Cure)*

66. For its first affirmative defense, CedarCrestone alleges that Oracle lacks standing to bring any claim for breach of contract, or to terminate either the OPN Agreement or the FUDA, because Oracle failed to comply with the requirements of those contracts requiring written notice and an opportunity to cure prior to bringing any lawsuit or terminating either contract.

67. Both section K of the OPN Agreement and section J of the FUDA provide that, if either party breaches a material term of the contracts, the non-breaching party must provide “written specification of the breach” and give the breaching party 30 days “to correct the breach.” Only if notice is given and the breach is not cured within 30 days may the non-breaching party terminate either contract, as Oracle has purported to do here.

68. Prior to purporting to terminate the OPN Agreement and FUDA on September 4, 2012 and filing this Complaint on September 5, 2012, Oracle never provided CedarCrestone with any written specification of CedarCrestone's alleged breaches, much less gave CedarCrestone the opportunity to cure those alleged breaches. Accordingly, Oracle had no right to terminate either contract or pursue any action for breach of contract. Contrary to the allegations in Oracle's Complaint, CedarCrestone committed no acts in violation of Oracle's Partner Code of Conduct and Business Ethics ("Ethics Code") that could justify immediate termination of either the OPN Agreement or FUDA.

**SECOND AFFIRMATIVE DEFENSE**  
*(Contractual Statute of Limitations)*

69. For its second affirmative defense, CedarCrestone alleges that Oracle's claims are barred, in whole or in part, by applicable statutes of limitation.

70. Both section U.4 of the OPN Agreement and section T.4 of the FUDA provide that, “[e]xcept for actions for nonpayment or breach of Oracle’s proprietary rights, no action, regardless of form, arising out of or related to this agreement may be brought by either party more than two years after the cause of action has accrued.” Oracle filed this action on September 5, 2012.

1       71. As Oracle expressly pleads in paragraph 23 of the Complaint, and elsewhere,  
2 Oracle is asserting claims arising out of statements made and business practices disclosed by  
3 CedarCrestone in CedarCrestone's March 16, 2010 proposal to the Oklahoma City Municipal  
4 Facilities Authority. CedarCrestone's proposal has been a matter of public record, and available  
5 to the general public over the Internet (at  
6 <http://www.okc.gov/agendapub/cache/2/hflcdfrosh5z1h55o3lcpif5/119038210062012013732145.pdf>), since at least June 2010. Oracle did not assert any claims against CedarCrestone arising  
7 from this proposal until the filing of the Complaint in this action on September 5, 2012—close to  
8 two and a half years from the date of the proposal, and well over two years since the proposal was  
9 publicly posted. Accordingly, any claims by Oracle arising out of the March 16, 2010 proposal,  
10 or the CedarCrestone business practices described therein, are within the scope of the limitations  
11 provisions in the OPN Agreement and FUDA. To the extent Oracle's claims are not “actions for  
12 nonpayment or breach of Oracle's proprietary rights,” those claims are time-barred.  
13

14       72. As Oracle expressly pleads in paragraph 28 of the Complaint, and elsewhere,  
15 Oracle is asserting claims arising out of statements made and business practices disclosed by  
16 CedarCrestone in CedarCrestone's October 22, 2009 proposal to the Tucson Unified School  
17 District. Oracle had actual possession of this proposal, and actual notice of its contents, no later  
18 than August 5, 2010, when defendant SAP AG (“SAP”) included the proposal as Exhibit A-6648  
19 on its Trial Exhibit List in the *Oracle v. SAP* litigation in this District, Case No. 07-CV-1658 PJH  
20 (EDL) (N.D. Cal.). In this instance, Oracle had actual notice of the CedarCrestone statements and  
21 business practices that are the basis of Oracle's claims more than two years prior to the filing of  
22 the Complaint on September 5, 2012. Despite that actual knowledge, Oracle did not assert any  
23 claims against CedarCrestone until the filing of the Complaint in this action. Accordingly, any  
24 claims by Oracle arising out of the October 22, 2009 proposal are within the scope of the  
25 limitations provisions in the OPN Agreement and FUDA. To the extent Oracle's claims are not  
26 “actions for nonpayment or breach of Oracle's proprietary rights,” those claims are time-barred.  
27  
28

**THIRD AFFIRMATIVE DEFENSE**  
*(Waiver)*

73. For its third affirmative defense, CedarCrestone alleges that Oracle has waived, settled, satisfied, or extinguished its claims, which waiver, settlement, satisfaction, or extinguishment was supported by adequate consideration.

74. As Oracle expressly pleads in paragraph 28 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and business practices disclosed by CedarCrestone in CedarCrestone's October 22, 2009 proposal to the Tucson Unified School District. Oracle had actual possession of this proposal, and actual knowledge of its contents, no later than August 5, 2010, when defendant SAP included the proposal as Exhibit A-6648 on its Trial Exhibit List in the *Oracle v. SAP* litigation. Despite having notice of CedarCrestone's statements and business practices as of August 5, 2010, Oracle did not assert any claims against CedarCrestone until the filing of the Complaint in this action more than two years later, on September 5, 2012.

75. Similarly, as Oracle expressly pleads in paragraph 23 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and business practices disclosed by CedarCrestone in CedarCrestone’s March 16, 2010 proposal to the Oklahoma City Municipal Facilities Authority. CedarCrestone’s proposal has been a matter of public record, and available to the general public over the Internet (at <http://www.okc.gov/agendapub/cache/2/hflcdfrosh5z1h55o3lcpif5/119038210062012013732145.pdf>), since at least June 2010. Moreover, Oracle had actual possession of this proposal, and actual notice of its contents, no later than July 28, 2011, when CedarCrestone produced the proposal, among other documents, to Oracle in response to a subpoena in the pending *Oracle v. Rimini Street* litigation, Case No. 2:10-CV-0106-LRH-PAL (D. Nev.). Despite having notice of CedarCrestone’s statements and business practices at least since July 28, 2011, if not since June 2010, Oracle did not assert any claims against CedarCrestone until the filing of the Complaint in this action more than a year later, on September 5, 2012.

76. Finally, as Oracle expressly pleads in paragraph 23 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and an event disclosed by

1 CedarCrestone in CedarCrestone's August 19, 2011 letter to Oracle regarding CedarCrestone's  
2 work for George Weston Bakeries. Despite having notice of the relevant statements and events  
3 no later than August 19, 2011, Oracle did not assert any claims against CedarCrestone until the  
4 filing of the Complaint in this action on September 5, 2012.

5       77. Despite having knowledge of all the purported wrongdoing by CedarCrestone  
6 alleged in the Complaint no later than August 19, 2011—and much of the alleged wrongdoing for  
7 more than two years—Oracle continued to do business with CedarCrestone until it purported to  
8 terminate the OPN Agreement and FUDA on September 4, 2012. Indeed, despite having  
9 knowledge of CedarCrestone's purported wrongdoing, Oracle renewed both the OPN Agreement  
10 and the FUDA—in November 2011 and April 2012, respectively. Moreover, in the spring of  
11 2012, Oracle took further affirmative acts to show support for CedarCrestone and its business  
12 practices, by selecting CedarCrestone as an Oracle North America Public Sector SOA Pillar  
13 Partner and accepting CedarCrestone into the Oracle Invested Partner Community for FMW.  
14 Through all these affirmative acts taken over a period of months, during which Oracle failed to  
15 assert any claims against CedarCrestone, Oracle unambiguously communicated to CedarCrestone,  
16 with full knowledge of all material facts, that it either saw nothing wrong with CedarCrestone's  
17 statements and business practices or that it was affirmatively electing to waive any claim it could  
18 have asserted stemming from those statements or business practices.

19       78. Oracle's conduct was so inconsistent with any intent to enforce the copyrights or  
20 contractual rights it is purporting to enforce in this action that any reasonable contractual partner  
21 reasonably would have come to believe that Oracle was relinquishing any rights it could have  
22 pursued. In response to Oracle's actions, including but not limited to the renewal of the OPN  
23 Agreement and FUDA, CedarCrestone reasonably and actually believed that Oracle had no  
24 substantive objection to any of the statements or business practices that form the basis of Oracle's  
25 claims in this action.

26

27

28

## **FOURTH AFFIRMATIVE DEFENSE**

***(Laches)***

79. For its fourth affirmative defense, CedarCrestone alleges that Oracle's claims are barred, in whole or in part, by the doctrine of laches.

80. As Oracle expressly pleads in paragraph 28 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and business practices disclosed by CedarCrestone in CedarCrestone's October 22, 2009 proposal to the Tucson Unified School District. Oracle had actual possession of this proposal, and actual knowledge of its contents, no later than August 5, 2010, when defendant SAP included the proposal as Exhibit A-6648 on its Trial Exhibit List in the *Oracle v. SAP* litigation. Despite having notice of CedarCrestone's statements and business practices as of August 5, 2010, Oracle did not assert any claims against CedarCrestone until the filing of the Complaint in this action more than two years later, on September 5, 2012.

81. Similarly, as Oracle expressly pleads in paragraph 23 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and business practices disclosed by CedarCrestone in CedarCrestone’s March 16, 2010 proposal to the Oklahoma City Municipal Facilities Authority. CedarCrestone’s proposal has been a matter of public record, and available to the general public over the Internet (at <http://www.okc.gov/agendapub/cache/2/hflcdfrosh5zlh55o3lcpif5/119038210062012013732145.pdf>), since at least June 2010. Moreover, Oracle had actual possession of this proposal, and actual notice of its contents, no later than July 28, 2011, when CedarCrestone produced the proposal, among other documents, to Oracle in response to a subpoena in the pending *Oracle v. Rimini Street* litigation. Despite having notice of CedarCrestone’s statements and business practices at least since July 28, 2011, if not since June 2010, Oracle did not assert any claims against CedarCrestone until the filing of the Complaint in this action more than a year later, on September 5, 2012.

82. Finally, as Oracle expressly pleads in paragraph 23 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and an event disclosed by CedarCrestone in CedarCrestone's August 19, 2011 letter to Oracle regarding CedarCrestone's

1 work for George Weston Bakeries. Despite having notice of the relevant statements and event no  
2 later than August 19, 2011, Oracle did not assert any claims against CedarCrestone until the filing  
3 of the Complaint in this action on September 5, 2012.

4       83.     Despite having knowledge of all the purported wrongdoing by CedarCrestone  
5 alleged in the Complaint no later than August 19, 2011—and much of the alleged wrongdoing for  
6 more than two years—Oracle continued to do business with CedarCrestone until it purported to  
7 terminate the OPN Agreement and FUDA on September 4, 2012. Indeed, despite having  
8 knowledge of CedarCrestone’s purported wrongdoing, Oracle renewed both the OPN Agreement  
9 and the FUDA—in November 2011 and April 2012, respectively. Moreover, in the spring of  
10 2012, Oracle took further affirmative acts to show support for CedarCrestone and its business  
11 practices, by selecting CedarCrestone as an Oracle North America Public Sector SOA Pillar  
12 Partner and accepting CedarCrestone into the Oracle Invested Partner Community for FMW.  
13 Through all these affirmative acts taken over a period of months, during which Oracle failed to  
14 assert any claims against CedarCrestone, Oracle unambiguously communicated to CedarCrestone,  
15 with full knowledge of all material facts, that it either saw nothing wrong with CedarCrestone’s  
16 statements and business practices or that it was affirmatively electing to waive any claim it could  
17 have asserted stemming from those statements or business practices or events.

18       84.     Oracle’s delay in raising any objection to CedarCrestone’s alleged conduct, and in  
19 filing this lawsuit, was unreasonable and inexcusable and has prejudiced CedarCrestone. As a  
20 result of Oracle’s willful inaction, and the assurances Oracle provided to CedarCrestone by  
21 expressing a willingness to continue working with CedarCrestone, and actually renewing its  
22 contracts and partnerships with CedarCrestone, CedarCrestone elected to renew those contracts  
23 and partnerships and to continue spending time and money providing and expanding services to  
24 Oracle software licensees, assisting Oracle with activities designed to drive license revenue to  
25 Oracle, and investing in co-development and marketing activities. CedarCrestone further relied  
26 on its continuing status as a certified Oracle partner in continuing to allocate resources to its  
27 existing initiatives with Oracle, including co-development, demonstrating Oracle software for  
28 prospective Oracle licensees, and developing solutions and proposals on other contracts, the

1 success of some of which bids was expressly contingent on CedarCrestone remaining an Oracle  
2 partner. CedarCrestone devoted resources to servicing those existing customers who required  
3 Oracle partner status, preparing proposals for future work for such customers, and planning to  
4 staff those future projects. All of these commitments forced CedarCrestone to divert its scarce  
5 resources from other potentially lucrative business lines and projects.

6 **FIFTH AFFIRMATIVE DEFENSE**  
7 **(Equitable Estoppel)**

8 85. For its fifth affirmative defense, CedarCrestone alleges that Oracle's claims are  
9 barred, in whole or in part, by the doctrine of equitable estoppel.

10 86. As Oracle expressly pleads in paragraph 28 of the Complaint, and elsewhere,  
11 Oracle is asserting claims arising out of statements made and business practices disclosed by  
12 CedarCrestone in CedarCrestone's October 22, 2009 proposal to the Tucson Unified School  
13 District. Oracle had actual possession of this proposal, and actual knowledge of its contents, no  
14 later than August 5, 2010, when defendant SAP included the proposal as Exhibit A-6648 on its  
15 Trial Exhibit List in the *Oracle v. SAP* litigation. Despite having notice of CedarCrestone's  
16 statements and business practices as of August 5, 2010, Oracle did not assert any claims against  
17 CedarCrestone until the filing of the Complaint in this action more than two years later, on  
18 September 5, 2012.

19 87. Similarly, as Oracle expressly pleads in paragraph 23 of the Complaint, and  
20 elsewhere, Oracle is asserting claims arising out of statements made and business practices  
21 disclosed by CedarCrestone in CedarCrestone's March 16, 2010 proposal to the Oklahoma City  
22 Municipal Facilities Authority. CedarCrestone's proposal has been a matter of public record, and  
23 available to the general public over the Internet (at  
24 <http://www.okc.gov/agendapub/cache/2/hflcdfrosh5z1h55o3lcpif5/119038210062012013732145.pdf>), since at least June 2010. Moreover, Oracle had actual possession of this proposal, and  
25 actual notice of its contents, no later than July 28, 2011, when CedarCrestone produced the  
26 proposal, among other documents, to Oracle in response to a subpoena in the pending *Oracle v.*  
27 *Rimini Street* litigation. Despite having notice of CedarCrestone's statements and business  
28

1 practices at least since July 28, 2011, if not since June 2010, Oracle did not assert any claims  
2 against CedarCrestone until the filing of the Complaint in this action more than a year later, on  
3 September 5, 2012.

4       88. Finally, as Oracle expressly pleads in paragraph 23 of the Complaint, and  
5 elsewhere, Oracle is asserting claims arising out of statements made and an event disclosed by  
6 CedarCrestone in CedarCrestone's August 19, 2011 letter to Oracle regarding CedarCrestone's  
7 work for George Weston Bakeries. Despite having notice of the relevant statements and event no  
8 later than August 19, 2011, Oracle did not assert any claims against CedarCrestone until the filing  
9 of the Complaint in this action on September 5, 2012.

10      89. Despite having knowledge of all the purported wrongdoing by CedarCrestone  
11 alleged in the Complaint no later than August 19, 2011—and much of the alleged wrongdoing for  
12 more than two years—Oracle continued to do business with CedarCrestone until it purported to  
13 terminate the OPN Agreement and FUDA on September 4, 2012. Indeed, despite having  
14 knowledge of CedarCrestone's purported wrongdoing, Oracle renewed both the OPN Agreement  
15 and the FUDA—in November 2011 and April 2012, respectively. Moreover, in the spring of  
16 2012, Oracle took further affirmative acts to show support for CedarCrestone and its business  
17 practices, by selecting CedarCrestone as an Oracle North America Public Sector SOA Pillar  
18 Partner and accepting CedarCrestone into the Oracle Invested Partner Community for FMW.  
19 Through all these affirmative acts taken over a period of months, during which Oracle failed to  
20 specify or assert any claims against CedarCrestone, Oracle unambiguously communicated to  
21 CedarCrestone, with full knowledge of all material facts, that it either saw nothing wrong with  
22 CedarCrestone's statements and business practices or that it was affirmatively electing to waive  
23 any claim it could have asserted stemming from those statements or business practices.

24      90. CedarCrestone had a right to assume, and did assume, that Oracle had concluded  
25 that none of CedarCrestone's business practices or acts constituted any violation of Oracle's  
26 rights. Prior to September 4, 2012, when it abruptly terminated CedarCrestone's partner status,  
27 Oracle had never given CedarCrestone any indication that Oracle considered any of the acts  
28 alleged in the Complaint to constitute copyright infringement, breach of contract, unfair business

1 practices, or any other civil wrong. As a result of Oracle's willful inaction, and the assurances  
2 Oracle provided to CedarCrestone by expressing a willingness to continue working with  
3 CedarCrestone, and actually renewing its contracts and partnerships with CedarCrestone,  
4 CedarCrestone elected to renew those contracts and partnerships and to continue spending time  
5 and money providing and expanding services to Oracle software licensees, assisting Oracle with  
6 activities designed to drive license revenue to Oracle, and investing in co-development and  
7 marketing activities. CedarCrestone further relied on its continuing status as a certified Oracle  
8 partner in continuing to allocate resources to its existing initiatives with Oracle, including co-  
9 development, demonstrating Oracle software for prospective Oracle licensees, and developing  
10 solutions and proposals on other contracts, the success of some of which bids was expressly  
11 contingent on CedarCrestone remaining an Oracle partner. CedarCrestone devoted resources to  
12 servicing those existing customers who required Oracle partner status, preparing proposals for  
13 future work for such customers, and planning to staff those future projects. All of these  
14 commitments forced CedarCrestone to divert its scarce resources from other potentially lucrative  
15 business lines and projects.

**SIXTH AFFIRMATIVE DEFENSE**  
*(Implied License)*

91. For its sixth affirmative defense, CedarCrestone alleges that Oracle's claims are barred, in whole or in part, by the doctrine of implied license.

92. As Oracle expressly pleads in paragraph 28 of the Complaint, and elsewhere, Oracle is asserting claims arising out of statements made and business practices disclosed by CedarCrestone in CedarCrestone's October 22, 2009 proposal to the Tucson Unified School District. Oracle had actual possession of this proposal, and actual knowledge of its contents, no later than August 5, 2010, when defendant SAP included the proposal as Exhibit A-6648 on its Trial Exhibit List in the *Oracle v. SAP* litigation. Despite having notice of CedarCrestone's statements and business practices as of August 5, 2010, Oracle did not assert any claims against CedarCrestone until the filing of the Complaint in this action more than two years later, on September 5, 2012.

1       93.   Similarly, as Oracle expressly pleads in paragraph 23 of the Complaint, and  
2 elsewhere, Oracle is asserting claims arising out of statements made and business practices  
3 disclosed by CedarCrestone in CedarCrestone's March 16, 2010 proposal to the Oklahoma City  
4 Municipal Facilities Authority. CedarCrestone's proposal has been a matter of public record, and  
5 available to the general public over the Internet (at  
6 <http://www.okc.gov/agendapub/cache/2/hflcdfrosh5z1h55o3lcpif5/119038210062012013732145.pdf>), since at least June 2010. Moreover, Oracle had actual possession of this proposal, and  
7 actual notice of its contents, no later than July 28, 2011, when CedarCrestone produced the  
8 proposal, among other documents, to Oracle in response to a subpoena in the pending *Oracle v.*  
9 *Rimini Street* litigation. Despite having notice of CedarCrestone's statements and business  
10 practices at least since July 28, 2011, if not since June 2010, Oracle did not assert any claims  
11 against CedarCrestone until the filing of the Complaint in this action more than a year later, on  
12 September 5, 2012.

14       94.   Finally, as Oracle expressly pleads in paragraph 23 of the Complaint, and  
15 elsewhere, Oracle is asserting claims arising out of statements made and an event disclosed by  
16 CedarCrestone in CedarCrestone's August 19, 2011 letter to Oracle regarding CedarCrestone's  
17 work for George Weston Bakeries. Despite having notice of the relevant statements and event no  
18 later than August 19, 2011, Oracle did not assert any claims against CedarCrestone until the filing  
19 of the Complaint in this action on September 5, 2012.

20       95.   Despite having knowledge of all the purported wrongdoing by CedarCrestone  
21 alleged in the Complaint no later than August 19, 2011—and much of the alleged wrongdoing for  
22 more than two years—Oracle continued to do business with CedarCrestone until it purported to  
23 terminate the OPN Agreement and FUDA on September 4, 2012. Indeed, despite having  
24 knowledge of CedarCrestone's purported wrongdoing, Oracle renewed both the OPN Agreement  
25 and the FUDA—in November 2011 and April 2012, respectively. Moreover, in the spring of  
26 2012, Oracle took further affirmative acts to show support for CedarCrestone and its business  
27 practices, by selecting CedarCrestone as an Oracle North America Public Sector SOA Pillar  
28 Partner and accepting CedarCrestone into the Oracle Invested Partner Community for FMW.

1 Through all these affirmative acts taken over a period of months, during which Oracle failed to  
2 assert any claims against CedarCrestone, Oracle unambiguously communicated to CedarCrestone,  
3 with full knowledge of all material facts, that it either saw nothing wrong with CedarCrestone's  
4 statements and business practices or that it was affirmatively electing to waive any claim it could  
5 have asserted stemming from those statements or business practices.

6        96. The totality of Oracle’s and CedarCrestone’s conduct, in negotiating and then  
7 agreeing to continue their long-standing contractual relationship, demonstrates Oracle’s intent to  
8 grant CedarCrestone permission to provide assurances to customers regarding the beneficial  
9 effects of CedarCrestone’s partnerships with Oracle, and to provide the alleged types of services  
10 to CedarCrestone customers that Oracle now contends violated its rights. As a result of Oracle’s  
11 conduct, CedarCrestone reasonably inferred that Oracle had consented to CedarCrestone  
12 continuing to do the alleged acts that Oracle now contends violate its rights.

**SEVENTH AFFIRMATIVE DEFENSE**  
*(De Minimis Use of Copyrighted Materials)*

15        97. For its seventh affirmative defense, CedarCrestone alleges that, even if Oracle  
16 could satisfy the other elements of its claim for copyright infringement, any use CedarCrestone  
17 made of Oracle copyrighted material was either authorized by Oracle or, to the extent it was  
18 unauthorized, was so trivial, insignificant, and harmless to Oracle that it is not actionable as  
19 copyright infringement.

98. The conduct Oracle asserts to be unlawful in its Complaint is trivial. First, Oracle  
20 asserts that, in one instance, CedarCrestone mistakenly provided tax and regulatory software  
21 updates to an Oracle licensee whose right to receive those updates had expired because it had  
22 declined to continue making annual payments to Oracle for a maintenance and support contract,  
23 which in some cases would have included a right to such updates. There is no dispute that, at the  
24 start of its relationship with CedarCrestone, the client, George Weston Bakeries, had a valid and  
25 current contract in place for Oracle support, and thus was entitled to receive Oracle update  
26 material. There is also no dispute that George Weston Bakeries's contract with CedarCrestone  
27 required George Weston Bakeries to have a current contract with Oracle and to notify

1 CedarCrestone of any change in the status of its contract with Oracle. Thereafter, George Weston  
2 Bakeries dropped Oracle support, but failed to notify CedarCrestone of having done so. As soon  
3 as CedarCrestone learned that George Weston Bakeries had dropped Oracle support, it  
4 immediately stopped providing updates to George Weston Bakeries, recommended that George  
5 Weston Bakeries contract directly with Oracle for its support needs (including for retroactive  
6 payment for updates it had received after the expiration of its support contract with Oracle), and  
7 self-reported all these facts to Oracle.

8       99. Second, Oracle contends that CedarCrestone copied Oracle software onto  
9 CedarCrestone's system, whereas the Oracle license requires that software to be maintained on  
10 the client's system. To begin with, CedarCrestone's relationships with its customers and those  
11 customers' obligations to Oracle are governed by a variety of licenses with Oracle (and with  
12 Oracle's predecessor PeopleSoft), and not all such licenses contain any limitation that the Oracle  
13 software be maintained only on the client's system. Likewise, many if not all of those licenses  
14 permit Oracle clients themselves to make an unlimited number of copies of Oracle software for  
15 the client's own use, and those licenses are silent as to where those copies may be maintained. In  
16 any event, Oracle is not disputing that CedarCrestone provided any services to any client that it  
17 was not entitled to provide, or even that CedarCrestone could have worked remotely for clients on  
18 a copy of software maintained on the client's system; Oracle is complaining only that  
19 CedarCrestone did work for clients from a copy of software maintained in the wrong location.

20       100. Third, Oracle complains that CedarCrestone used a single copy of Oracle software  
21 as the basis for its work for various clients, rather than separately downloading the exact same  
22 Oracle program repeatedly. Oracle does not dispute, nor could it, that CedarCrestone could have  
23 downloaded multiple instances of the same Oracle software from Oracle and, in doing so,  
24 possessed, and used for the benefit of CedarCrestone clients, the same number of copies of the  
25 identical software.

26       101. Oracle's complaints of copyright infringement are form over substance and did not  
27 effect any impairment of Oracle's copyrights, ability to license those copyrights, or revenue  
28 derived from such licensing. Indeed, for many of the clients for whom CedarCrestone has

1 provided tax and regulatory support, Oracle did not even provide the tax or regulatory support  
2 services that CedarCrestone provided, and consequently customers who used and relied on  
3 CedarCrestone's support services would not have turned to Oracle for competing services even if  
4 CedarCrestone had offered no services at all. Accordingly, even if CedarCrestone did the acts  
5 Oracle complains it did, any unauthorized use of Oracle copyrighted materials by CedarCrestone  
6 was *de minimis* and does not constitute actionable copyright infringement.

## **EIGHTH AFFIRMATIVE DEFENSE** *(Fair Use)*

102. For its eighth affirmative defense, CedarCrestone alleges that, even if Oracle could  
9 satisfy the other elements of its claim for copyright infringement, any use CedarCrestone made of  
10 Oracle's copyrighted material was a fair use that is not actionable. Among other factors  
11 supporting a finding of fair use, Oracle is complaining about purely technical, non-substantive  
12 alleged violations of its licenses. It does not contend, nor could it, that CedarCrestone was barred  
13 from providing the identical support services it provided on the identical software; it contends  
14 merely that CedarCrestone did this work on copies of software maintained on CedarCrestone's  
15 system rather than doing so remotely on identical copies maintained on the client's system.  
16 Similarly, Oracle asserts that CedarCrestone violated the law by downloading a single copy of  
17 software from Oracle, then copying it for multiple clients (all of whom were entitled to download  
18 a copy of that exact software), rather than downloading the same software from Oracle multiple  
19 times. To the extent CedarCrestone engaged in any unauthorized copying, it was minuscule in  
20 quantity and entirely non-substantive. Moreover, any such unauthorized copying had no effect  
21 whatsoever on the market for Oracle's software licensing business, and Oracle does not offer any  
22 specific facts contending otherwise. As discussed above, many of CedarCrestone's clients who  
23 received CedarCrestone tax and regulatory support used older versions of Oracle applications, for  
24 which Oracle no longer provided the sort and extent of software support services that  
25 CedarCrestone provided. Consequently, many of the customers who used and relied on  
26 CedarCrestone's support services would not have turned to Oracle for competing services even if  
27 CedarCrestone had offered no services at all, so the acts by CedarCrestone that Oracle alleges in  
28

1 its complaint had no affect on Oracle's licensing business or the value of the copyrighted material  
2 at issue.

3 **NINTH AFFIRMATIVE DEFENSE**  
4 **(No Material Breach)**

5 103. For its ninth affirmative defense, CedarCrestone alleges that, even if  
6 CedarCrestone did breach either the OPN Agreement or the FUDA through the conduct alleged in  
7 Oracle's Complaint (which alleged breach CedarCrestone denies), any such breach was not  
8 material and does not justify termination of either contract.

9 104. For the reasons set forth above in CedarCrestone's foregoing affirmative defenses,  
10 Oracle is complaining about trivial purported violations of its licenses, to the extent those licenses  
11 even contain the restrictions Oracle is attempting to enforce. To begin with, CedarCrestone's  
12 relationships with its customers and with Oracle are governed by a variety of licenses and other  
13 agreements with Oracle (and with Oracle's predecessor PeopleSoft). Not all such licenses and  
14 agreements contain any limitation that the Oracle software be maintained only on the client's  
15 system. Likewise, many if not all of those licenses and agreements permit Oracle clients  
16 themselves to make an unlimited number of copies of Oracle software for the client's own use,  
17 and those licenses and agreements are silent as to where those copies must be maintained.

18 105. Even assuming the relevant licenses do contain the restrictions Oracle is  
19 attempting to enforce, the conduct by CedarCrestone that Oracle is alleging violated its rights was  
20 trivial and did not impair the consideration Oracle received under the licensing contracts. Oracle  
21 does not contend, nor could it, that CedarCrestone was barred from providing the identical  
22 support services it provided on the identical software; it contends merely that CedarCrestone did  
23 this work on copies of software maintained on CedarCrestone's system rather than doing so  
24 remotely on identical copies maintained on the client's system. Similarly, Oracle asserts that  
25 CedarCrestone violated the law by downloading a single copy of software from Oracle, then  
26 copying it for multiple clients, rather than downloading multiple copies of the identical software  
27 from Oracle. Even if Oracle could prove CedarCrestone engaged in any unauthorized copying, it  
28 would be minuscule in quantity and entirely non-substantive.

1       106. Moreover, any such unauthorized copying had no effect whatsoever on the market  
2 for Oracle's software licensing business, and Oracle does not offer any specific facts contending  
3 otherwise. CedarCrestone offered two types of tax-and-regulatory-update services. First, in  
4 CedarCrestone's Retro Support service, CedarCrestone, acting as an agent of an  
5 Oracle/PeopleSoft licensee, would customize a tax and regulatory update, which the licensee had  
6 paid Oracle to receive. The Retro Support service provided a client with a usable update that  
7 would work retroactively with the client's fully licensed (but unsupported by Oracle) PeopleSoft  
8 applications. Second, in CedarCrestone's Extend Support service, CedarCrestone would  
9 independently develop tax and regulatory updates of a sort that Oracle provided, if at all, only as  
10 part of a much larger, more expensive support package. Cedar Crestone's Retro Support services  
11 were complementary to Oracle's offerings and required the client to maintain Oracle support.  
12 Similarly, its Extend Support services filled a small need that Oracle did not offer independently,  
13 but only in the context of a larger, more expensive support package, which many clients could not  
14 afford and had elected not to purchase. In fact, both CedarCrestone's Retro and Extend services  
15 provided direct benefits to Oracle. In the case of Retro, these services kept clients on Oracle  
16 support contracts, thereby preserving Oracle's maintenance revenue, even though Oracle no  
17 longer actively supported the client's software. In the case of Extend, CedarCrestone's services  
18 allowed clients to keep using Oracle applications while staying current regarding their tax and  
19 regulatory obligations, notwithstanding Oracle's refusal to design a support package that met  
20 these clients' needs.

21       107. As to at least some of the CedarCrestone clients at issue, Oracle did not even  
22 provide the sort and extent of tax and regulatory support services that CedarCrestone provided,  
23 and consequently customers who used and relied on CedarCrestone's tax and regulatory support  
24 services could not and would not have turned to Oracle for competing services even if  
25 CedarCrestone had offered no services at all. Even if Oracle could plead and prove actual harm  
26 stemming from CedarCrestone's alleged conduct, that harm plainly would have been  
27 compensable in damages, such as in the form of a somewhat enhanced licensing fee, and thus is  
28 not a material breach of either the OPN Agreement or FUDA that could justify termination.

**TENTH AFFIRMATIVE DEFENSE**  
*(Failure to Mitigate)*

108. For its tenth affirmative defense, CedarCrestone alleges that Oracle has failed to  
3 take any steps to mitigate any damages it might have suffered as the result of the alleged  
4 misconduct in this case. For example, Oracle alleges that CedarCrestone breached its contracts  
5 with Oracle and committed unethical acts by providing Oracle tax and regulatory updates to  
6 George Weston Bakeries, a former Oracle licensee whose support contract with Oracle had lapsed  
7 after it began receiving updates from CedarCrestone. CedarCrestone had no knowledge that  
8 George Weston Bakeries's support contract, which allowed George Weston Bakeries to receive  
9 Oracle updates, had lapsed, and relied on the express requirement in its contract with George  
10 Weston Bakeries that required George Weston Bakeries to maintain a current license with Oracle  
11 and to notify CedarCrestone if it no longer had such a license. Upon discovering that George  
12 Weston Bakeries had canceled its Oracle support contract, CedarCrestone immediately stopped  
13 providing any Oracle materials to George Weston Bakeries, terminated its contract with George  
14 Weston Bakeries, and self-reported this inadvertent mistake to Oracle in an August 19, 2011  
15 letter. Since August 19, 2011, Oracle has taken no steps to recover the value of the materials  
16 George Weston Bakeries received without permission, either from George Weston Bakeries  
17 directly or from CedarCrestone as George Weston Bakeries's agent. It would be trivially easy for  
18 Oracle to calculate the value of the Oracle materials at issue; Oracle maintains fee schedules that  
19 set values for all the materials at issue. In fact, for more than a year—until purporting to  
20 terminate the OPN Agreement and FUDA on September 4, 2012—Oracle never even suggested  
21 to CedarCrestone that it had done anything wrong or actionable with respect to George Weston  
22 Bakeries. Instead, it affirmatively chose to renew both the OPN Agreement and FUDA with  
23 CedarCrestone after learning of George Weston Bakeries's misconduct.

**ELEVENTH AFFIRMATIVE DEFENSE**  
*(Reservation of Rights to Plead Additional Defenses)*

26       109. For its eleventh affirmative defense, CedarCrestone alleges that it has insufficient  
27 knowledge and information upon which to form a basis as to whether it may have additional, as  
28 yet unstated, separate defenses available. CedarCrestone reserves the right to amend this Answer

1 to add, delete, supplement, or modify these defenses based upon legal theories that may be or will  
2 be divulged through clarification of Oracle's Complaint, through discovery, or through further  
3 legal analysis of Oracle's position in this litigation.

4

5

### **COUNTERCLAIMS**

6 CedarCrestone hereby counterclaims against Oracle as follows:

7 1. This case is about Oracle's bad-faith and pretextual termination of contracts with  
8 CedarCrestone and CedarCrestone's status as an Oracle partner, and Oracle's broader war on  
9 competition in the downstream market for consulting, implementation, and support regarding  
10 Oracle software. As one would expect from a "partnership" arrangement, Oracle's contracts with  
11 CedarCrestone permitted termination only in the event of a material breach, and even then  
12 required the non-breaching party to give the breaching party 30 days written notice and an  
13 opportunity to cure. But on September 4, 2012, without providing a word of warning to  
14 CedarCrestone or offering CedarCrestone the opportunity to cure any alleged contractual  
15 breaches, Oracle purported to terminate both its OPN Agreement and FUDA with CedarCrestone,  
16 stripping CedarCrestone of its status as a certified Oracle partner. The "violations" Oracle  
17 alleged in its termination letter, and alleges in its Complaint in this case, are trivial and non-  
18 substantive—certainly not "material" to Oracle's contracts or relationship with CedarCrestone.  
19 Moreover, as detailed above, Oracle was well aware of the CedarCrestone business practices that  
20 were the supposed basis of its termination and are the basis of this lawsuit long before September  
21 4, 2012. In fact, after Oracle learned of those business practices, it affirmatively told  
22 CedarCrestone that it saw nothing wrong with anything CedarCrestone was doing by renewing  
23 both the OPN Agreement and the FUDA with CedarCrestone—in November 2011 and April  
24 2012, respectively. Moreover, in the spring of 2012, Oracle took further affirmative acts to show  
25 support for CedarCrestone and its business practices, by selecting CedarCrestone as an Oracle  
26 North America Public Sector SOA Pillar Partner and accepting CedarCrestone into the Oracle  
27 Invested Partner Community for FMW. Contrary to the allegations in Oracle's complaint, Oracle  
28 did not bring this suit to enforce its contractual and intellectual-property rights, none of which

1 were being threatened to any extent by anything CedarCrestone was doing. It terminated and is  
2 suing CedarCrestone (i) as part of an unlawful and systematic attack on competition by third-  
3 party service providers like CedarCrestone, who for years have focused on assisting Oracle in the  
4 support and licensing of Oracle software products; and (ii) to gain an advantage in its collateral  
5 litigation against its direct competitor Rimini Street.

6 **ADDITIONAL FACTUAL BACKGROUND**

7 **CedarCrestone, Inc.**

8 2. CedarCrestone provides a broad variety of information technology (“IT”) services,  
9 primarily related to enterprise software applications developed by Oracle. The primary part of  
10 CedarCrestone’s business, which is not at issue in this case, involves business and technology  
11 consulting services provided to users and licensees of Oracle’s PeopleSoft and Oracle E-Business  
12 Suites (“EBS”) applications (“Consulting”). The next largest part of CedarCrestone’s business,  
13 which is also not accused in this case, involves the hosting and management of PeopleSoft  
14 applications for clients, including Oracle (“Hosting” and “AMS”). Until 2011, nearly 100% of  
15 CedarCrestone’s revenue was derived from services related to Oracle’s PeopleSoft and EBS  
16 applications. CedarCrestone is a licensee of Oracle’s database products, middleware products,  
17 and PeopleSoft applications. CedarCrestone has also entered into software co-development  
18 partnerships with both Oracle and Oracle’s predecessor PeopleSoft. CedarCrestone has paid  
19 Oracle and PeopleSoft millions of dollars in license fees, currently paying Oracle over \$1 million  
20 annually in ongoing software maintenance on these licenses.

21 3. This lawsuit involves only a very small percentage of CedarCrestone’s business,  
22 consisting of third-party tax and regulatory support for a small category of Oracle software  
23 licensees who use older versions of Oracle software and/or whom Oracle itself generally declines  
24 to support in the manner those licensees require (“Tax/Regulatory Support”). Unless and until  
25 these licensees can upgrade to the current version of Oracle software or migrate to another  
26 software product, they need for their current software to be retrofitted so their system can stay in  
27 compliance with tax and regulatory obligations. In 2002, when CedarCrestone first began  
28 providing Tax/Regulatory Support services, its first client was referred to CedarCrestone by

1 Oracle's predecessor PeopleSoft. Since their introduction in 2002, Tax/Regulatory Support  
2 services have remained a small part of CedarCrestone's business, earning CedarCrestone only  
3 approximately \$10 million in total revenue over the past 10 years, or approximately \$1 million  
4 per year. This is less than 1% of CedarCrestone's total revenue.

5 4. CedarCrestone offered two types of tax-and-regulatory-update services. First, in  
6 CedarCrestone's Retro Support service, CedarCrestone, acting as an agent of an  
7 Oracle/PeopleSoft licensee, would customize a tax and regulatory update, which the licensee had  
8 paid Oracle to receive. The Retro Support service provided clients with tax and regulatory  
9 updates that would work retroactively with the client's fully licensed (but unsupported by Oracle)  
10 PeopleSoft application. Second, in CedarCrestone's Extend Support service, CedarCrestone  
11 would independently develop (and release, prior to the release of Oracle's own updates) tax and  
12 regulatory updates of a sort that Oracle provided only as part of a much larger, more expensive  
13 support package, if at all. Cedar Crestone's Retro Support services were complementary to  
14 Oracle's offerings and required the client to maintain Oracle support contracts. Similarly, its  
15 Extend Support services filled a small need that Oracle did not offer independently, but only in  
16 the context of a larger, more expensive support package, which many clients could not afford and  
17 had elected not to purchase. In fact, both CedarCrestone's Retro and Extend services provided  
18 direct benefits to Oracle. In the case of Retro, these services kept clients on Oracle support  
19 contracts, preserving Oracle's licensing and maintenance revenue, even though Oracle no longer  
20 actively supported the client's software. In the case of Extend, CedarCrestone's services allowed  
21 clients to keep using Oracle applications while staying current regarding their tax and regulatory  
22 obligations, notwithstanding Oracle's refusal to design a support package that met these clients'  
23 needs.

24 5. As discussed above, CedarCrestone's Tax/Regulatory Support customers are  
25 generally clients who use an older, outdated version of PeopleSoft software that Oracle itself no  
26 longer supports with tax and regulatory updates included in Oracle Software Support. Typically,  
27 Oracle licensees who purchase support contracts from Oracle are entitled to receive newer  
28 versions of their licensed PeopleSoft application without any direct additional charges beyond

1 those related to the license metrics (number of employees, number of users of the licensed Oracle  
2 products, total revenue, etc.). But even though obtaining the new software release itself imposes  
3 no additional direct cost, there are substantial costs associated with consulting on, implementing,  
4 and customizing a new software release. The overall cost of implementing and customizing a  
5 new software upgrade typically will exceed \$1 million. Because many Oracle licensees are not in  
6 a position to spend \$1 million automatically, Oracle licensees who pay for Oracle support may  
7 forego moving to a newer release of the PeopleSoft software immediately. In fact, the majority of  
8 Oracle PeopleSoft licensees originally acquired licenses for older versions of the software than  
9 the versions they currently operate today. In many cases, licensees have a license designed to  
10 cover the original version of software they licensed years before, rather than a contemporary  
11 license that would be granted for the newer version of the software they actually operate.

12       6. Over the course of many years and numerous releases of PeopleSoft applications,  
13 CedarCrestone's experience has shown that a small population of clients will choose not to  
14 upgrade their software immediately, and therefore require third party tax and regulatory support  
15 in order to keep their older software in compliance with tax and regulatory changes. The majority  
16 of these licensees, in CedarCrestone's experience, will continue to pay Oracle maintenance fees  
17 and eventually will complete an upgrade to a newer version of the relevant Oracle application,  
18 which Oracle itself will support, thereby eliminating their need for third party services. Other  
19 licensees will have made a decision to migrate to another software product and pay Oracle for  
20 support during their migration. Others will have made a decision to re-license Oracle applications  
21 and need the tax and regulatory support services only until such implementation or migration is  
22 complete. A smaller population of clients, such as Tucson Public Schools, will elect to drop  
23 Oracle maintenance altogether during a migration away from Oracle PeopleSoft.  
24 CedarCrestone's phased out tax and regulatory update services filled a small need for several  
25 specific types of Oracle PeopleSoft licensees, generally on a short term basis until they either  
26 upgraded to a newer version of PeopleSoft or completed their software selection process and  
27 migration.

28

1       7.     CedarCrestone's business differs from that of other companies that provide tax and  
2 regulatory support services, such as Oracle itself and Oracle competitors TomorrowNow and  
3 Rimini Street. The tax and regulatory support services CedarCrestone offered are one small  
4 subset of the much broader portfolio of bundled support and maintenance services offered by  
5 Oracle, and a small subset of the type of support services offered by TomorrowNow and Rimini  
6 Street. In the case of TomorrowNow and Rimini Street, their services are, or were, focused on  
7 persuading clients to replace Oracle support offerings with TomorrowNow or Rimini Street  
8 offerings. CedarCrestone has never encouraged clients to drop Oracle maintenance and has never  
9 proactively solicited any client for that purpose. To the contrary, CedarCrestone has worked with  
10 Oracle to help Oracle regain business from clients who have previously dropped support and  
11 migrated to TomorrowNow or Rimini Street. CedarCrestone has approached such clients and  
12 made efforts to persuade them to relicense their application with Oracle (thereby entitling Oracle  
13 to full software maintenance agreement revenue), then purchase tax and regulatory support from  
14 CedarCrestone as they completed their reimplementations. On many occasions over the past 10  
15 years, Oracle has referred Oracle customers who are in that in-between stage—not yet ready to  
16 upgrade or otherwise needing transitory assistance with tax and regulatory updates—to  
17 CedarCrestone for tax and regulatory support.

18       8.     As discussed above, the Tax/Regulatory Support business line has been only a  
19 minor part of CedarCrestone's business for the past 10 years. In January 2012, CedarCrestone  
20 decided to exit the Tax/Regulatory Support business altogether. CedarCrestone made the  
21 decision to close down its Tax/Regulatory Support business substantially before this lawsuit was  
22 filed. In February 2012, almost six months prior to Oracle's termination of CedarCrestone's  
23 partner status, CedarCrestone notified all its existing Tax/Regulatory Support clients that it was  
24 phasing out the tax and regulatory support service. CedarCrestone informed its Tax/Regulatory  
25 Support clients that it either would release them early from their contracts or would see out the  
26 remaining terms of its current support contracts, but would not renew those contracts for  
27 additional terms. When it provided these notices to clients, CedarCrestone referred clients to  
28 Oracle for their support concerns and needs. After giving these notices, CedarCrestone decided

1 to terminate all contracts covering its Retro and Extend tax and regulatory services. Prior to  
2 Oracle's termination of CedarCrestone's partner status, CedarCrestone had delivered formal  
3 notice of termination to all remaining Retro and Extend clients, with all services concluding on or  
4 before December 31, 2012.

5 9. After providing these notices to its existing Tax/Regulatory Support clients,  
6 CedarCrestone received feedback from employees of Oracle and from clients indicating that  
7 Oracle was unable to address some client needs for tax and regulatory support. In at least one  
8 case, CedarCrestone is aware that Oracle sent an email to an Oracle licensee in response to a  
9 request for help admitting that Oracle could not help the client. Instead, Oracle suggested two  
10 possible options for the client. First, the client could "ask a consulting firm like IBM to find out  
11 if they would be willing and at what cost to provide these tax updates." Second, the client could  
12 "[g]o to Rimini Street. Going to Rimini Street will most likely force you to pay ALL  
13 maintenance cost with them, not just payroll tax updates." At the time it sent this email, Oracle  
14 was engaged in litigation with Rimini Street in which litigation it was contending that Rimini  
15 Street's business model and services violated Oracle's intellectual-property rights.

16 10. Despite choosing to phase out its tax and regulatory support business line,  
17 CedarCrestone continues to provide services related to Oracle software applications through its  
18 other business lines. The fact that CedarCrestone's ongoing business, even if not accused in this  
19 lawsuit, remains tied to Oracle products means that it is valuable to, and sometimes essential for,  
20 CedarCrestone to be a certified Oracle partner. Indeed, many potential CedarCrestone clients,  
21 particularly in the public sector, would purchase consulting services only from Oracle itself or  
22 formally certified Oracle partners. To the extent CedarCrestone is not an officially certified  
23 Oracle partner, or is perceived to be out of favor or in conflict with Oracle, that would make it  
24 much less likely that some potential clients would choose to work with CedarCrestone, if not  
25 remove CedarCrestone entirely from consideration by those potential clients.

26 11. On information and belief, Oracle is well aware that companies like  
27 CedarCrestone, which provide downstream services related to Oracle software, benefit from  
28 certification as an official Oracle partner, and have greater difficulty competing for some

1 categories of new business if such certification is denied. On information and belief, Oracle is  
2 aware that many potential clients, particularly among public agencies, affirmatively require that  
3 any vendor providing consulting or implementation services on particular software be officially  
4 recognized as a “partner” by the software vendor, as CedarCrestone had been by Oracle prior to  
5 Oracle’s bad-faith and pretextual termination.

6 **Oracle’s Pretextual Complaints Against CedarCrestone**

7 12. Oracle terminated its contracts with CedarCrestone and CedarCrestone’s partner  
8 status for three purported categories of acts by CedarCrestone that Oracle asserts violated the  
9 terms of the OPN Agreement and the FUDA. All the purported violations are trivial. None  
10 constitutes breach of contract (much less a material breach of any contract), actionable copyright  
11 infringement, or unfair business practices. In reality, Oracle terminated the contracts and severed  
12 its partnership relationship with CedarCrestone as part of a concerted effort to destroy  
13 competition in the downstream market for consulting and support services on Oracle software  
14 (and to enable Oracle to capture business and profits formerly earned by competitors). Oracle  
15 also had the secondary, but also important, motivation of gaining an advantage in its ongoing  
16 litigation against its competitor Rimini Street. In that case, Oracle’s damages theory depends on  
17 the allegation that Rimini Street competed unfairly with Oracle and that, but for that alleged  
18 unfair competition, Rimini Street customers would have had no choice but to buy services from  
19 Oracle. The fact that CedarCrestone was, and for years had been, operating as a competitor in  
20 that same market—even if only with respect to tax and regulatory support generally  
21 complementary to Oracle’s own support offerings—was an obvious counterexample casting  
22 doubt on Oracle’s damages claim. Accordingly, in order to shape reality to suit its damages  
23 theory against Rimini Street, and maximize its potential recovery in the Rimini Street litigation,  
24 Oracle for the first time took the position that CedarCrestone’s business practices—which Oracle  
25 had recommended to clients for years—were illegal and violated Oracle’s rights.

26 13. A quick review of Oracle’s allegations reveals the triviality of the alleged conduct  
27 that is the basis of Oracle’s lawsuit. First, Oracle complains of a single instance where  
28 CedarCrestone allegedly delivered Oracle tax and regulatory updates to client George Weston

1 Bakeries, even though George Weston Bakeries's Oracle support and maintenance contract  
2 entitling it to acquire those Oracle updates had expired. But as CedarCrestone proactively  
3 disclosed to Oracle in its August 19, 2011 letter, during the entire time CedarCrestone was  
4 obtaining Oracle tax and regulatory updates as George Weston Bakeries's agent and retrofitting  
5 those updates for George Weston Bakeries, it believed based on George Weston Bakeries's  
6 express contractual representations that George Weston Bakeries was a current Oracle licensee  
7 that was fully entitled to receive such updates. CedarCrestone began providing support services  
8 to George Weston Bakeries in November 2008, at which point George Weston Bakeries actually  
9 had a valid support contract and license with Oracle. CedarCrestone's contract with George  
10 Weston Bakeries specifically obligated George Weston Bakeries to inform CedarCrestone  
11 immediately of any changes in the status of its then-current support contract with Oracle. George  
12 Weston Bakeries allowed its support contract with Oracle, and its right to receive Oracle updates,  
13 to lapse as of January 31, 2009, but never took any steps to inform CedarCrestone of this fact.  
14 Accordingly, in reliance on George Weston Bakeries's compliance with its contractual  
15 obligations, CedarCrestone continued to provide Oracle updates to George Weston Bakeries. On  
16 August 10, 2011, CedarCrestone learned for the first time that George Weston Bakeries no longer  
17 had a support and maintenance contract with Oracle. That same day, CedarCrestone contacted  
18 George Weston Bakeries about the issue. Through its General Counsel, George Weston Bakeries  
19 admitted that it had no current support contract with Oracle. CedarCrestone immediately stopped  
20 providing any Oracle materials to George Weston Bakeries and, on August 12, 2011,  
21 CedarCrestone terminated its contract with George Weston Bakeries.

22       14.     CedarCrestone immediately took steps to inform Oracle of this issue. Far from  
23 acting in bad faith, attempting to conceal this problem, or behaving in any manner cavalier to the  
24 rights of its contractual partner Oracle, CedarCrestone self-reported this inadvertent mistake to  
25 Oracle in its August 19, 2011 letter. Oracle did not accuse CedarCrestone of breaching any  
26 contract or infringing any copyrights, or threaten to terminate CedarCrestone's partner status. To  
27 the contrary, in the eight months that followed, Oracle renewed both its OPN Agreement and  
28 FUDA with CedarCrestone. For Oracle to suggest that this single, reasonable, good-faith mistake

1 by a longtime contractual partner constitutes a material breach of contract or caused Oracle more  
2 than nominal harm is factually false. It would be trivially simple for Oracle to calculate damages  
3 from George Weston Bakeries's misconduct; Oracle maintains fee schedules reflecting the value  
4 of the tax and regulatory updates George Weston Bakeries received without permission. But, to  
5 CedarCrestone's knowledge, Oracle has never taken any steps to recover this money, either from  
6 George Weston Bakeries or from CedarCrestone, as George Weston Bakeries's agent.

7 15. Second, Oracle accuses CedarCrestone of improperly copying Oracle software by  
8 (1) making a non-production copy of clients' properly licensed customer software, so it can work  
9 with that software on its own system, rather than doing the same work on the exact same software  
10 maintained remotely on its clients' systems; and (2) downloading a single copy of Oracle  
11 software for use with multiple (all properly licensed) clients, rather than downloading multiple  
12 copies of the same software, one for each client. Even if Oracle were right that CedarCrestone  
13 did these things in violation of Oracle's relevant software licenses and contracts with  
14 CedarCrestone (which CedarCrestone denies), all these acts would be trivial and non-substantive.

15 16. With respect to maintaining a copy of Oracle software on CedarCrestone's system,  
16 the contract terms Oracle is referring to and purporting to enforce were drafted by PeopleSoft,  
17 long before Oracle acquired PeopleSoft, and generally before PeopleSoft version 8 was  
18 architected and released for deployment over the Internet. The terms of many older PeopleSoft  
19 licenses are not consistent with the commercial reality of how the newer versions of the  
20 PeopleSoft software (to which Oracle PeopleSoft licensees have gained access by paying annual  
21 maintenance and support fees) is sold and used by Oracle licensees and supported by support  
22 vendors. In practice, Oracle has always recognized that, given that businesses today operate  
23 significantly over the Internet, any licensing restrictions prohibiting a support vendor from  
24 maintaining a copy of the client's software no longer reflect commercial realities or serve the  
25 purpose for which they were designed. Moreover, neither PeopleSoft nor Oracle has ever made  
26 any effort to enforce these restrictions. Prior to its acquisition by Oracle, PeopleSoft routinely  
27 granted explicit permission for copies of the relevant software to be maintained for clients by  
28 third parties. After acquiring PeopleSoft, Oracle on multiple occasions told CedarCrestone and

1 clients that permission was no longer required to maintain copies of client software. In fact,  
2 current Oracle licenses to the PeopleSoft applications do not contain the purported restrictions on  
3 third-party maintenance of client software that Oracle is attempting to enforce in this case. In any  
4 event, there is no dispute that CedarCrestone was entitled to provide the identical support services  
5 it provided on the identical software; Oracle objects only that CedarCrestone wrongly did this  
6 work on copies of software maintained on CedarCrestone's system rather than doing so remotely  
7 on identical copies maintained on the client's system.

8       17. Similarly, with respect to failing to download a distinct copy of software for each  
9 client, there is no dispute that CedarCrestone and all of CedarCrestone's clients had the right to  
10 use the software at issue; Oracle's only objection is that CedarCrestone itself made non-  
11 production copies rather than obtaining the multiple copies (to which either it or its clients were  
12 entitled) from Oracle.

13       18. Third, Oracle complains that a series of statements about CedarCrestone's business  
14 practices in a single client proposal to Oklahoma City are "intentional misrepresentations." None  
15 of the accused statements are any such thing. All of the accused statements are factually true  
16 representations of CedarCrestone's business practices. With respect to CedarCrestone's  
17 "statement," presented in a two-column table at page 11 of Oracle's Complaint, that its status as  
18 an Oracle Platinum Partner was a differentiator relative to other potential service providers,  
19 including providing "assurance that services are delivered free of intellectual property  
20 infringement," Oracle wrongly asserts that CedarCrestone was asserting that its partner status  
21 "immunized" it from infringement claims. Of course, the statement says no such thing; it  
22 conveys only the unobjectionable, factually true statement that a company that is a long-time  
23 partner of a software maker is generally more likely to be aware of and respect intellectual  
24 property restrictions than an unaffiliated service provider. It defies belief that Oracle considers  
25 any of the isolated statements in this single proposal to be genuinely objectionable, particularly  
26 when taken in the context of the full RFP response, attached draft contract, questions and answers  
27 circulated by Oklahoma City, and finally the deliberations and decision of Oklahoma City in  
28 approving the contract—all of which are matters of public record that are freely available over the

1 Internet. That Oracle's complaints are pretextual is further proven by the fact that Oracle had  
2 possession of this proposal no later than July 2011, and yet renewed both the OPN Agreement  
3 and FUDA with CedarCrestone in November 2011 and April 2012, respectively, and never raised  
4 any objection to CedarCrestone's supposed "misrepresentations" until filing this Complaint on  
5 September 5, 2012.

6 **Oracle's Assault on Competition in the Support Market**

7 19. Oracle's Complaint is not a genuine effort to rein in a misbehaving contractual  
8 partner and obtain compensation for harm, because CedarCrestone has not harmed Oracle in any  
9 way. Instead, Oracle's Complaint is only the latest salvo in an extended campaign by Oracle to  
10 destroy competition in the market for downstream consulting, support, and implementation  
11 services on Oracle software and to forestall entry of competing and innovative software products  
12 into the ERP market.

13 20. Despite being by far the world's dominant player in the market for database and  
14 enterprise software, Oracle's monopoly power historically has not extended to the downstream  
15 consulting, application management, and support markets. To the contrary, for years, the  
16 downstream support market has supported numerous, thriving third-party competitors to Oracle.  
17 Many of these third-party competitors have historically been willing to provide a broader range or  
18 better quality of support than Oracle, or have provided these services at cheaper prices. In the  
19 area of third-party maintenance and support, including tax and regulatory support, third-party  
20 vendors such as TomorrowNow and Rimini Street have actively challenged Oracle's dominant  
21 position by seeking to induce Oracle applications licensees to redirect their support spending  
22 away from Oracle, reportedly charging often about half of what Oracle charges for its bundled  
23 offering, which entitles clients to both the right to future software releases and maintenance.

24 21. For example, Oracle periodically releases new software products, and new editions  
25 or releases of existing software products. These new products, or new releases of existing  
26 products, supersede older products or releases, rendering the older products and releases obsolete.  
27 At some point after releasing a new product or release, Oracle will cease providing tax and  
28 regulatory support for older, legacy editions of software, even though Oracle may continue to

1 provide technical support. Oracle has every incentive to prevent third parties from providing tax  
2 and regulatory support for such older software, because such third party offerings unbundle such  
3 tax and regulatory support from the rights to future releases of the software. Oracle offers tax and  
4 regulatory support only in a bundle with the rights to future software releases. Unbundling those  
5 two product offerings allows Oracle software users to continue using their current software  
6 without also committing to purchase new versions of software that it may not be in a financial  
7 position to implement for years, if ever. Yet until recently, there have been several other entities  
8 willing and able to provide tax and regulatory support services for older software. These  
9 unbundled, stand-alone support offerings extend the life of older Oracle software, enabling users  
10 to conserve their resources by avoiding the immediate need for costly upgrades to new versions of  
11 software and implementation of those new versions. In other words, the presence of third-party  
12 support providers is not only good for competition and consumers on its own, it also has  
13 beneficial, pro-competitive effects for Oracle software licensees. Further, because Oracle is a  
14 very large company with many different products and business lines, many Oracle applications  
15 customers would prefer to purchase consulting, implementation, and support services from a third  
16 party whose entire business, or a large portion of whose business, consists of providing those  
17 services apart from the software itself. Even putting relative quality to one side, there is no  
18 question that many third-party support providers historically have provided services at a lower  
19 price than Oracle.

20       22. Of course, Oracle would rather leverage its dominant market position in database  
21 and enterprise software into a monopoly in the different market for support services on its own  
22 software. A monopoly would allow Oracle to charge higher prices for support services, and to  
23 ensure that tax and regulatory services are available only as part of a bundle with the software  
24 itself. It would also allow Oracle to dictate the terms of the range of support services available to  
25 software licensees. If Oracle chose to stop supporting any older software products or releases, its  
26 licensees would face a stark and difficult choice: keep the older edition without any support from  
27 the vendor, or spend its scarce resources on consulting enabling it to upgrade to the new edition  
28 of software and implement that new edition. Needless to say, not every Oracle licensee is in a

1 market and financial position to upgrade to every new Oracle software product or release in the  
2 time frame mandated by Oracle's limited support offerings. Depending on the financial status of  
3 a licensee, its survival may depend on the ability to make do with an older product for some  
4 period of time before upgrading to a newer product. Third-party support service providers are  
5 particularly important to this group of Oracle customers, but they generally provide competition,  
6 and thus downward pressure on prices in the support market, as they bifurcate Oracle's support  
7 product offering into fees charged for support services and fees that are embedded in the support  
8 offering but are designed to cover the cost of future software releases. Competition also provides  
9 an incentive for all market participants to provide a broader range of competent, attentive support  
10 services. For most clients, the most critical support service they receive are the tax and regulatory  
11 updates provided by CedarCrestone's Tax/Regulatory Support business line.

12       23. Oracle's pretextual termination of both its contracts with CedarCrestone and  
13 CedarCrestone's partner status, without providing notice or any chance to cure the alleged  
14 breaches, was an anti-competitive act designed to destroy a competitor in the downstream market  
15 for consulting, implementation hosting and managed service, and tax and regulatory updates and  
16 to discourage other vendors from entering that market or growing their market shares. Here, the  
17 particular CedarCrestone business line that Oracle accuses—CedarCrestone's Tax/Regulatory  
18 Support services—was a very small part of CedarCrestone's business, accounting for about 1% of  
19 CedarCrestone's annual revenue. Moreover, as of January 2012, CedarCrestone had planned to  
20 exit the Tax/Regulatory Support business line, committed not to renew any existing contracts.  
21 Since then, it has given notice to all Tax/Regulatory Support clients that those services would no  
22 longer be available from CedarCrestone after December 31, 2012. Nevertheless, CedarCrestone  
23 continues to provide other Consulting, Hosting, and AMS services for Oracle software, which  
24 services are unrelated to claims at issue in Oracle's Complaint. As discussed above, it is critical,  
25 if not essential, for a provider of support services on Oracle software to have a good relationship  
26 with Oracle and, if possible, to be an officially recognized Oracle partner. Oracle was aware that,  
27 by terminating its contracts with CedarCrestone and CedarCrestone's partner status, it would cast  
28 a shadow on CedarCrestone's viability in the support market, making CedarCrestone a less viable

1 competitor in the downstream market for consulting, implementation, and maintenance services  
2 and causing substantial losses of business and revenue.

3       24. Oracle's anti-competitive war on third-party support providers did not start with  
4 CedarCrestone. In 2010, Oracle filed a lawsuit against a direct competitor, Rimini Street,  
5 accusing Rimini Street of unfairly competing with Oracle using an illegal business model. That  
6 case is pending. (CedarCrestone's business model, and the nature of its competition with Oracle,  
7 was very different from Rimini Street's. Whereas Rimini Street seeks to steer customers away  
8 from Oracle software and services, thereby competing directly and costing Oracle business and  
9 revenue when it succeeds in landing clients, CedarCrestone's Tax/Regulatory Support business  
10 did not compete with Oracle directly. In general, that business line offered only services that  
11 Oracle did not offer and that were complementary to Oracle, thereby strengthening the  
12 relationship between Oracle licensees and their Oracle software.) Oracle's damages theory  
13 against Rimini Street in that lawsuit depends on the premise that, had Rimini Street not unfairly  
14 competed against Oracle, Rimini Street's customers would have used Oracle's competing  
15 services instead. There were also other companies offering support services complementary to  
16 Oracle's services, including not only CedarCrestone, but also others, including Spinnaker and  
17 netCustomer.

18       25. Because these companies were offering similar, competing services during the  
19 relevant time frame, and continued to offer such services even after Oracle filed suit against  
20 Rimini Street, they were obvious, glaring counterexamples disproving Oracle's theory that Rimini  
21 Street was its lone competitor. Tellingly, netCustomer is not currently actively competing in the  
22 tax-and-regulatory-support market, and Spinnaker appears to have substantially revised its tax  
23 and regulatory support practices. Both Spinnaker and netCustomer received subpoenas from  
24 Oracle in the Rimini Street case, much as CedarCrestone did. Spinnaker subsequently revised the  
25 scope of services advertised on its website to stress that it does work only on software maintained  
26 on the client's system. NetCustomer has apparently gone out of the tax and regulatory support  
27 business altogether since receiving Oracle's subpoena, with a website that has long promised that  
28 the company "is revising its services."

1       26. Finally, in February 2012, Oracle filed suit against two other support vendors—  
2 ServiceKey and DLT Federal Business Systems Corporation (“DLT Federal”), accusing those  
3 companies of engaging in a conspiracy “to steal and distribute copyrighted, proprietary Oracle  
4 software code, along with the login credentials necessary to download this code from Oracle's  
5 password-protected websites.” As with the Rimini Street case, this lawsuit, and Oracle's other  
6 conduct described above, Oracle's complaint against ServiceKey and DLT Federal made clear  
7 that Oracle's real concern was competition in the support market and the unbundling of Oracle's  
8 software offering from a complementary support offering. Oracle asserted that the purpose of the  
9 alleged conspiracy by ServiceKey and DLT Federal was to “sell support on Oracle hardware to  
10 customers with no active support contract with Oracle.”

11        27. Oracle had long been fully aware of the nature of CedarCrestone's business,  
12 including the precise business practices that it now claims in this suit were unlawful. Oracle had  
13 never previously accused CedarCrestone of doing anything that violated Oracle's rights. In fact,  
14 as discussed above, after having notice of everything it now complaints was unlawful, Oracle  
15 took the affirmative step of blessing CedarCrestone's conduct by renewing both the OPN  
16 Agreement and FUDA with CedarCrestone. It was only when it became necessary to justify its  
17 damages theory, and maximize its potential recovery, against Rimini Street that Oracle made the  
18 decision, for the first time in September 2012, to accuse CedarCrestone of breach of contract,  
19 copyright infringement, and unfair business practices.

## **Harm to CedarCrestone from Oracle's Bad-Faith Anti-Competitive Conduct**

21        28. CedarCrestone has suffered damages as the result of Oracle's anti-competitive  
22 acts, including its bad-faith breach of its contracts with CedarCrestone and its pretextual  
23 termination of CedarCrestone's partner status. CedarCrestone has lost the benefit of the licensing  
24 fees CedarCrestone paid to Oracle after the renewals of the OPN Agreement and FUDA. It has  
25 also lost the value of amounts paid for marketing activities to or in conjunction with Oracle, after  
26 Oracle barred CedarCrestone from participating in those marketing events. Moreover,  
27 CedarCrestone has also suffered substantial lost business as the result of Oracle's termination of  
28 CedarCrestone's partner status. As discussed above, even before Oracle's wrongful accusations

1 of breach of contract and copyright infringement, CedarCrestone was in the process of phasing  
2 out its Tax/Regulatory Support business line—the business at issue with respect to all of Oracle’s  
3 claims of breach of contract and/or copyright infringement in Oracle’s Complaint. CedarCrestone  
4 had informed Oracle, and all of its customers, of this intention. But Oracle’s accusations of  
5 copyright infringement and breach of contract, and its decision to pursue litigation against  
6 CedarCrestone, have caused harm to CedarCrestone’s other, far more substantial Consulting,  
7 Hosting, and AMS business lines. As Oracle undoubtedly knew they would, Oracle’s accusations  
8 and termination of CedarCrestone’s partner status have cast a shadow over CedarCrestone’s  
9 business as a whole and caused some potential CedarCrestone customers to decide against doing  
10 business with CedarCrestone.

11       29. On September 18, 2012, the Los Angeles Community College District  
12 (“LACCD”) informed CedarCrestone that, because of Oracle’s wrongful termination of  
13 CedarCrestone’s partner status and unfounded accusations of breach of contract and copyright  
14 infringement, LACCD was no longer willing to hire CedarCrestone to provide implementation  
15 services on PeopleSoft software. LACCD had previously selected CedarCrestone to provide  
16 consulting services at the same time it selected the underlying software package—in this case  
17 Oracle’s PeopleSoft software. CedarCrestone and LACCD had successfully concluded contract  
18 negotiations, leaving only the remaining step of ratification and approval of the contract by  
19 LACCD’s governing board, which approval was set for September 2012. That contract would  
20 have resulted in approximately \$17 million in revenue to CedarCrestone throughout its life. Upon  
21 receiving Oracle’s letter of termination and its lawsuit, CedarCrestone proactively disclosed to  
22 LACCD that Oracle had terminated CedarCrestone’s partner status. As LACCD informed  
23 CedarCrestone, LACCD’s request for proposal contained a material requirement that the vendor  
24 providing implementation services “be in a formal relationship with the associated software  
25 vendor.” With Oracle having terminated CedarCrestone’s partner status and initiated litigation,  
26 CedarCrestone no longer satisfied this material requirement.

27       30. The LACCD business did not relate to the small Tax/Regulatory Support part of  
28 CedarCrestone’s business that is at issue in this case. In other words, Oracle’s bad-faith and

1 pretextual termination of its agreements with CedarCrestone and CedarCrestone's partnership  
2 status has had a direct negative financial impact on CedarCrestone's other business lines.

3       31. Prior to terminating its agreements with CedarCrestone and CedarCrestone's  
4 partner status, Oracle was aware that CedarCrestone had bid on, and was close to formally being  
5 awarded, the LACCD contract. As is generally the case with such contracts, LACCD negotiated  
6 simultaneously with Oracle (the software vendor) and CedarCrestone (the implementation  
7 vendor), and Oracle was aware that LACCD had selected and was negotiating a final agreement  
8 with CedarCrestone. Having concluded that it would successfully conclude negotiations with  
9 CedarCrestone, LACCD completed its purchase of Oracle's PeopleSoft software in advance of  
10 finalizing the consulting contract. Further, Oracle was aware that LACCD's request for proposal  
11 required that the implementation vendor have a "formal relationship" with the software vendor,  
12 and thus that, by terminating CedarCrestone's partner status, Oracle would be making it  
13 impossible for CedarCrestone to obtain the LACCD contract, and would force LACCD to choose  
14 the only other Oracle partner who submitted a bid on the project. Oracle thus retained the  
15 LACCD software contract for itself, while causing LACCD to have no viable option other than to  
16 contract with the competitor against which CedarCrestone had prevailed during the RFP process.

17       32. On September 25, 2012, Midwest Independent Transmission System Operator  
18 ("MISO") informed CedarCrestone that, because of Oracle's wrongful termination of  
19 CedarCrestone's partner status and unfounded accusations of breach of contract and copyright  
20 infringement, "MISO has made the decision that CedarCrestone no longer complies with MISO's  
21 requirements" for a project CedarCrestone had bid on, "and, as a result, has been formally  
22 eliminated from competition for the award of this project." MISO further informed  
23 CedarCrestone that this decision was final with respect to this project, but that, "[s]hould  
24 CedarCrestone prevail in the aforementioned litigation or obtain a favorable settlement with  
25 Oracle under which its status as a Platinum Oracle Partner is reinstated, MISO will be open to the  
26 review CedarCrestone's possible reinstatement as an acceptable bidder for future MISO sourcing  
27 projects."

28

1       33.     The MISO project was projected to pay CedarCrestone \$85,000 on finalization of  
2 the contract and as much as \$1,000,000 over the life of the contract. Prior to Oracle's wrongful  
3 termination of the OPN Agreement and FUDA, CedarCrestone believed and expected that MISO  
4 would award it the contract. Presently, CedarCrestone believes that MISO would have awarded  
5 CedarCrestone the contract but for Oracle's breach of the OPN Agreement and FUDA by  
6 terminating those contracts in the absence of any material breach, including any breach of  
7 Oracle's Ethics Code, and without giving CedarCrestone notice or an opportunity to cure.

8       34.     The MISO business did not relate to the small Tax/Regulatory Support part of  
9 CedarCrestone's business that is at issue in this case. In other words, Oracle's bad-faith and  
10 pretextual termination of its agreements with CedarCrestone and CedarCrestone's partnership  
11 status has had a direct negative financial impact on CedarCrestone's other business lines.

12      35.     Most recently, on October 8, 2012, the American Association of Retired Persons  
13 ("AARP") informed CedarCrestone that, because of Oracle's wrongful termination of  
14 CedarCrestone's partner status and unfounded accusations of breach of contract and copyright  
15 infringement, AARP had decided to remove CedarCrestone from consideration for a contract for  
16 software implementation, hosting, and support services.

17      36.     The AARP project was projected to pay CedarCrestone approximately \$2 million  
18 for implementation services and between \$2 million and \$3 million for hosting services over the  
19 life of the contract. Prior to Oracle's wrongful termination of the OPN Agreement and FUDA,  
20 CedarCrestone believed and expected that AARP would award it the contract. Presently,  
21 CedarCrestone believes that AARP would have awarded CedarCrestone the contract but for  
22 Oracle's breach of the OPN Agreement and FUDA by terminating those contracts in the absence  
23 of any material breach, including any breach of Oracle's Ethics Code, and without giving  
24 CedarCrestone notice or an opportunity to cure.

25      37.     CedarCrestone expects that there will be other instances in the near future where it  
26 loses contracts it otherwise would have obtained as the result of Oracle's bad-faith and pretextual  
27 termination of its agreements with CedarCrestone and CedarCrestone's partner status.  
28

1       38. Further, Oracle has also undermined CedarCrestone's ability to capture consulting  
2 business by discriminating against CedarCrestone on pricing, and in favor of CedarCrestone  
3 competitors. In summer 2012, CedarCrestone bid on a contract with the Washington State Board  
4 for Community & Technical Colleges ("Washington"). The contract was for both software and  
5 consulting, implementation, and support services on that software, and was very large, valued at  
6 over \$100 million. Some of the software CedarCrestone proposed in its bid to use was Oracle  
7 software. In cases where a client is seeking both software and system implementation services,  
8 Oracle insists that the system implementation vendor be the primary contractor with the client,  
9 and that its software be sold through one of its resellers. In this case, the relevant Oracle reseller  
10 was Mythics Consulting. On CedarCrestone bids prior to the Washington bid where this  
11 arrangement was in effect, Mythics had consistently provided all bidders with identical pricing,  
12 usually at about 95% less than Oracle's list price. But on the Washington bid, Mythics refused to  
13 provide CedarCrestone with any pricing at all, informing CedarCrestone that Oracle had directed  
14 Mythics not to provide such pricing to CedarCrestone only. Without any pricing from Mythics,  
15 much less the typical 95% discount from the list price, CedarCrestone had no choice but to submit  
16 its proposal using the rates available to the U.S. General Services Administration, which are  
17 approximately 35-44% less than Oracle list prices. CedarCrestone is informed and on that basis  
18 believes that its competing bidders obtained the usual 95% discount from list prices through  
19 Mythics. CedarCrestone's proposal was downscored and eliminated from consideration, in large  
20 part because its projected costs were substantially higher than those of the other bidders—a direct  
21 consequence of Oracle's price discrimination.

22       39. The Washington proposal was not the first time Oracle had arbitrarily refused to  
23 provide pricing information to CedarCrestone for inclusion in a CedarCrestone proposal to a  
24 client. In May 2012, Oracle refused to provide any pricing for CedarCrestone for a bid that  
25 CedarCrestone was submitting to the San Mateo County, California on a joint services and  
26 software contract worth between approximately \$2.5 million and \$3 million. Because of Oracle's  
27 refusal to provide any software pricing information, CedarCrestone was forced to submit a bid  
28 only for the services portion of the contract. Because it was unable to bid on the entire project, its

1 bid was unacceptable to the client and was not selected. During the next month, June 2012,  
2 Oracle refused to provide any pricing information for CedarCrestone for a bid that CedarCrestone  
3 was submitting to Broward County, Florida. Oracle eventually provided pricing information on  
4 the same day the proposal was due. It is usually the case that, by the due date of a proposal,  
5 CedarCrestone has already delivered the proposal to the client and is well past the point of being  
6 able to add new information. In the case of the Broward County proposal, CedarCrestone was  
7 able to incorporate Oracle's pricing information into the final proposal delivered to the  
8 prospective client.

## **First Claim for Relief**

Breach of Contract  
(Against Oracle America)

11       40.     CedarCrestone hereby incorporates by reference each of the allegations in the  
12 preceding paragraphs as though fully set forth here.

13       41. As Oracle correctly pleads, Oracle and CedarCrestone were parties to at least two  
14 separate valid contracts—the OPN Agreement and the FUDA. The OPN Agreement was  
15 renewed by Oracle and CedarCrestone most recently in November 2011. The parties renewed the  
16 FUDA most recently in April 2012.

17       42. Both section K of the OPN Agreement and section J of the FUDA give either party  
18 the right to terminate the contracts, but only in certain defined circumstances. First, before either  
19 party may terminate, the other party must have breached a material term of the contract. Second,  
20 after a material breach has occurred, the non-breaching party must provide “written specification  
21 of the breach.” Third, after written specification of the material breach is provided, the non-  
22 breaching party must give the breaching party 30 days “to correct the breach.” Only if the  
23 material breach is not cured within 30 days of the written specification may the non-breaching  
24 party terminate either contract, as Oracle has purported to do here.

25       43. On September 4, 2012, without fulfilling any of the three necessary conditions  
26 precedent to termination, Oracle purported to terminate both the OPN Agreement and FUDA  
27 against CedarCrestone, revoking CedarCrestone's status as a licensed Oracle partner. This  
28 conduct by Oracle breached both the OPN Agreement and FUDA.

1       44. First, CedarCrestone had done nothing that could constitute a material breach of  
2 either contract, including any violation of Oracle's Ethics Code that purportedly could justify  
3 immediate termination of the OPN Agreement or FDA. Oracle contends in its Complaint that  
4 CedarCrestone breached the contracts by copying Oracle software without authorization in two  
5 separate ways. Both allegations of copying are trivial and did not impair the consideration Oracle  
6 received under the licensing contracts. First, Oracle contends that CedarCrestone did tax and  
7 regulatory support work for its clients on copies of software maintained on CedarCrestone's  
8 system. Oracle contends this was unauthorized, even though Oracle gave CedarCrestone's clients  
9 the right to make an unlimited number of copies of Oracle software for its own use, and nothing  
10 in Oracle's license with these clients restricts the client from maintaining one of those copies on a  
11 support vendor's system. Oracle asserts instead that CedarCrestone should have done this same  
12 work remotely (or locally at the client site) on identical copies of the same software maintained  
13 on the client's system. Second, Oracle asserts that CedarCrestone violated Oracle's rights by  
14 downloading a single copy of software from Oracle, then copying it for more than one client.  
15 Oracle asserts that CedarCrestone instead ought to have downloaded multiple copies of the same  
16 software from Oracle and used a distinct downloaded copy for each separate client. Even if they  
17 otherwise had a basis in the contractual language and the parties' practices, both of these  
18 allegations of breach would be formal and technical. None of these alleged violations, even  
19 assuming they are violations (which CedarCrestone denies), affected any of Oracle's substantive  
20 rights under the contracts. Other than with respect to the alleged non-material breaches, which  
21 CedarCrestone contests, it is undisputed that CedarCrestone performed all aspects of the OPN  
22 Agreement and the FDA as those contracts require.

23       45. Moreover, any such unauthorized copying had no effect whatsoever on the market  
24 for Oracle's software licensing business, and Oracle does not offer any specific facts contending  
25 otherwise. As discussed above, Oracle does not even provide the sort and extent of tax and  
26 regulatory support services that CedarCrestone provided. Instead, Oracle elected to limit its own  
27 tax and regulatory support offering to newer software, cutting off support customers after a  
28 specified time period after the given version of the software at issue first became available.

1 Consequently, customers who used and relied on CedarCrestone's Tax/Regulatory Support  
2 services would not have turned to Oracle for competing services even if CedarCrestone had  
3 offered no services at all. Even if Oracle could plead and prove actual harm stemming from  
4 CedarCrestone's alleged conduct, that harm plainly would have been compensable in damages,  
5 and thus is not a material breach of either the OPN Agreement or FUDA justifying termination.

6 46. Second, even if CedarCrestone's purported breaches of the OPN Agreement and  
7 FUDA were material (and they were not), Oracle was still obligated under those contracts to  
8 provide written specification of, and give CedarCrestone 30 days to cure, the alleged breaches  
9 before it could have the right to terminate either contract. But prior to purporting to terminate the  
10 OPN Agreement and FUDA on September 4, 2012 and filing this Complaint on September 5,  
11 2012, Oracle never provided CedarCrestone with any written specification of CedarCrestone's  
12 alleged breaches, much less gave CedarCrestone the opportunity to cure those alleged breaches.  
13 Accordingly, Oracle had no right to terminate either contract, and Oracle's purported termination  
14 was itself a material breach of both the OPN Agreement and the FUDA.

15 47. Oracle asserts in its Complaint that it was entitled to immediately terminate the  
16 OPN Agreement and FUDA notwithstanding the notice-and-cure terms, because CedarCrestone  
17 purportedly violated the terms of Oracle's Ethics Code by making false statements and violating  
18 Oracle's intellectual-property rights. But, as already discussed, nothing CedarCrestone did was  
19 any actionable violation of any Oracle intellectual-property rights. Neither did CedarCrestone  
20 make any material false or misleading statement regarding its services or business practices, or  
21 commit any other act that could constitute a violation of the Ethics Code.

22 48. As discussed above, CedarCrestone has already suffered substantial damages as  
23 the result of Oracle's breaches of the OPN Agreement and FUDA. CedarCrestone has lost a  
24 contract with LACCD that was fully negotiated and pending only formal approval by the client's  
25 Board. That contract represented a substantial investment by CedarCrestone made over a nearly  
26 two-year RFP process. Once approved, it would have been worth \$17 million in revenue to  
27 CedarCrestone. CedarCrestone also lost a contract with MISO that it was substantially likely to  
28 be awarded, which contract would have resulted in approximately \$1 million over its life.

1           49. Both the OPN Agreement and FUDA contain terms purporting to limit  
2 CedarCrestone's ability to seek or recover damages for Oracle's breaches of contract. Both  
3 contracts purport to limit recoverable damages to the fees paid by CedarCrestone to Oracle under  
4 those contracts, and to bar CedarCrestone from seeking consequential damages or lost profits,  
5 among other categories of damages. These damages limitations are unenforceable for various  
6 reasons. First, they are both substantively and procedurally unconscionable. Oracle is the  
7 world's dominant player in the market for database and enterprise software and retains the right to  
8 refuse licenses to its intellectual property, including its software, and to refuse to certify other  
9 support vendors as Oracle partners. Both the OPN Agreement and FUDA are form contracts of  
10 adhesion; they are presented to potential partners for acceptance or rejection, but are not subject  
11 to change through negotiation with Oracle. The OPN Agreement in particular is presented to  
12 potential partners through a click-through online interface, where there is no opportunity for the  
13 potential partner to engage to any degree with Oracle, much less negotiate a modification to any  
14 contractual term. Moreover, both the OPN Agreement and FUDA are non-reciprocal, purporting  
15 to place significant limitations on CedarCrestone's right (or the right of any Oracle "partner") to  
16 recover damages beyond recovery of fees paid to Oracle, while imposing no such limit on Oracle.  
17 Second, the damages limitations are also void as against California public policy to the extent  
18 they immunize Oracle's bad-faith, intentionally tortious, or unlawfully anti-competitive conduct.

## **Second Claim for Relief**

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## Intentional Interference with Prospective Economic Advantage (Against all Oracle Counter-defendants)

21       50. CedarCrestone hereby incorporates by reference each of the allegations in the  
22 preceding paragraphs as though fully set forth here.

23       51. Oracle was generally aware that, for vendors hoping to compete in the downstream  
24 market for consulting, implementation, and maintenance of Oracle software, it is critical, if not  
25 essential, to have a non-adversarial relationship with Oracle. Oracle is further generally aware  
26 that many potential clients, particularly public agencies, refuse to consider working with a  
27 consulting, implementation, and maintenance vendor who is not in a formal partnership  
28 relationship with Oracle, in part as a result of Oracle's lobbying efforts. Oracle was generally

1 aware that, if it terminated a vendor's partner status, it would have a substantial negative effect on  
2 that vendor's existing business opportunities, make it much less likely that the vendor could  
3 acquire future business, and would serve as an absolute bar to that vendor's prospects of working  
4 with a substantial number of prospective clients, particularly in the public sphere.

5 52. Moreover, it is generally the case that a client selecting a consulting and  
6 implementation vendor will do so in conjunction with its purchase of software from Oracle, and  
7 will negotiate both its software contract and its support contract contemporaneously. With  
8 respect to the LACCD contract opportunities recently lost by CedarCrestone, Oracle was well  
9 aware that those clients were selecting a support vendor and that CedarCrestone had pursued and  
10 been awarded that business. Oracle knew that LACCD's contract with CedarCrestone was fully  
11 negotiated and awaiting only formal Board approval. Oracle was also well aware that LACCD  
12 required that any support vendor be in a formal partnership agreement with Oracle and/or in good  
13 standing with Oracle. Accordingly, Oracle was aware that termination of CedarCrestone's  
14 partnership status, its assertions that CedarCrestone violated Oracle's rights, and the initiation of  
15 this lawsuit, taken together, would eliminate CedarCrestone from consideration by LACCD. In  
16 choosing to terminate CedarCrestone's partnership status for bad-faith and pretextual reasons  
17 related to the elimination of competition in the consulting, implementation, and maintenance  
18 market and gaining an advantage in the collateral *Rimini Street* litigation, Oracle intended that  
19 CedarCrestone suffer the consequences of Oracle's actions, including but not limited to the loss  
20 of any opportunity to do business with LACCD in particular, and myriad other similarly situated  
21 potential clients in general.

22 53. Oracle's interference with CedarCrestone's prospective economic relations with  
23 LACCD was wrongful for reasons independent of the interference itself. Oracle terminated the  
24 CedarCrestone contracts as part of a sustained initiative to destroy competition in the downstream  
25 market for consulting, support, and implementation of Oracle software, and to leverage its  
26 monopoly in the market for its own software into an undeserved monopoly in the support market,  
27 forcing clients to pay more for an Oracle-controlled product bundle containing those support  
28 services Oracle chooses to provide along with new releases of Oracle software that the customer

1 may not be in a position to implement. Oracle's litigation against Rimini Street was a prior act in  
2 furtherance of this same plan. By terminating a competitor's partner status for no valid reason,  
3 Oracle was aware it would greatly, if not entirely, compromise that partner's ability to compete,  
4 removing that partner as a potential competitive threat and increasing the chances that Oracle  
5 would eventually capture that business and the support market generally. Oracle has taken other  
6 anti-competitive steps to disadvantage CedarCrestone, harm its ability to turn business  
7 opportunities into contracts, and funnel business away from CedarCrestone to itself and other  
8 CedarCrestone competitors, including by instructing its software resellers not to provide price  
9 quotes and price discounts to CedarCrestone, and thereby discriminating against CedarCrestone,  
10 and in favor of other competitors, on the basis of price.

11       54. Further, in order to interfere with CedarCrestone's prospective economic relations,  
12 Oracle first had to commit a bad-faith breach of not one but two separate contracts of its own with  
13 CedarCrestone, the OPN Agreement and the FUDA. Both of those contracts permitted  
14 termination by a party only in the event that the other party first committed a material breach of  
15 the contract going to the heart of the consideration provided to the non-breaching party. Nothing  
16 CedarCrestone allegedly did that was the basis for Oracle's termination and is the basis of this  
17 lawsuit comes close to being material or impairing Oracle's consideration under either contract.  
18 Further, even if CedarCrestone had committed a material breach (which it did not), Oracle was  
19 still obligated, under both contracts, to give CedarCrestone written notice specifying the breaches  
20 and permitting CedarCrestone an opportunity to cure the breaches. Oracle did neither. Because  
21 time was of the essence to Oracle in the *Rimini Street* litigation, Oracle simply ignored these  
22 contractual covenants and purported to terminate, despite plainly having no right to do so,  
23 including no right under the terms of Oracle's Ethics Code. Oracle was aware of its contractual  
24 obligations and intentionally disregarded them in order to maximize the harm to CedarCrestone  
25 and its business, including depriving CedarCrestone of customers with which it was actively  
26 negotiating and who would have hired CedarCrestone but for Oracle's willful acts. This harm to  
27 CedarCrestone's business was not only foreseeable by Oracle, it was Oracle's entire motivation in  
28 terminating its partner relationship with CedarCrestone.

1       55. As discussed above, CedarCrestone has already suffered substantial damages as  
2 the result of Oracle's intentional interference with its business opportunities. CedarCrestone has  
3 lost the opportunity to finalize a nearly-completed contract with LACCD that was nearly finalized  
4 and would have been worth \$17 million in revenue to CedarCrestone.

5       56. Both the OPN Agreement and FUDA contain terms purporting to limit  
6 CedarCrestone's ability to seek or recover damages for Oracle's breaches of contract. Both  
7 contracts purport to limit recoverable damages to the fees paid by CedarCrestone to Oracle under  
8 those contracts, and to bar CedarCrestone from seeking consequential damages or lost profits,  
9 among other categories of damages. These damages limitations are unenforceable for various  
10 reasons. First, they are unenforceable as a matter of California law under California Civil Code  
11 section 1668, which invalidates any contract to the extent it purports to exempt a party from  
12 liability for intentional tortious or grossly negligent conduct, or any conduct constituting a  
13 violation of law. Second, the damages limitations are both substantively and procedurally  
14 unconscionable. Oracle is the world's dominant player in the market for database and enterprise  
15 software and retains the right to refuse licenses to its intellectual property, including its software,  
16 and to refuse to certify other support vendors as Oracle partners. Both the OPN Agreement and  
17 FUDA are form contracts of adhesion; they are presented to potential partners for acceptance or  
18 rejection, but are not subject to change through negotiation with Oracle. The OPN Agreement in  
19 particular is presented to potential partners through a click-through online interface, where there  
20 is no opportunity for the potential partner to engage to any degree with Oracle, much less  
21 negotiate a modification to any contractual term. Moreover, both the OPN Agreement and FUDA  
22 are non-reciprocal, purporting to place significant limitations on CedarCrestone's right (or the  
23 right of any Oracle "partner") to recover damages beyond recovery of fees paid to Oracle, while  
24 imposing no such limit on Oracle.

25       57. Oracle's conduct, as described above, was oppressive and malicious and supports  
26 an award of punitive damages against Oracle.  
27  
28

### **Third Claim for Relief**

### Unfair Business Practices

(Against all Oracle Counter-defendants)

58. CedarCrestone hereby incorporates by reference each of the allegations in the preceding paragraphs as though fully set forth here.

59. Oracle has engaged in unlawful, unfair, and/or fraudulent business acts or practices by, among other things, (a) engaging in unfair, fraudulent, and/or bad-faith conduct that violated its OPN Agreement and FUDA with CedarCrestone, as described above; (b) misleading prospective CedarCrestone customers about the content of CedarCrestone business practices and the extent to which Oracle had knowledge of and had affirmatively approved those business practices for years prior to Oracle’s purported termination of CedarCrestone’s partner status; (c) interfering with CedarCrestone’s prospective economic advantage, as described above; and (d) taking affirmative and concerted acts to harm competition in the downstream market for support, consulting, and implementation of Oracle software, in which CedarCrestone is a participant.

60. CedarCrestone committed these unlawful, unfair, and/or fraudulent business acts and practices in order to gain an unfair competitive advantage over CedarCrestone in competing for the provision of support services to Oracle software licensees, and in order to gain a tactical advantage in the collateral *Rimini Street* litigation.

61. Oracle's unlawful, unfair, and/or fraudulent business acts and practices offend numerous California public policies, including policies against making false or misleading statements to potential consumers regarding commercial services, bad-faith and intentional breaches of contract, interference with a competitor's prospective economic advantage, and use of monopoly power in one market to harm competition in a downstream market. Oracle's practices were and are immoral, unethical, oppressive, and/or unscrupulous, including because they intentionally and falsely seek to portray CedarCrestone as a company with no respect for Oracle's contractual and intellectual-property rights and to deceive potential clients into thinking that CedarCrestone engages in willful violations of Oracle's rights.

62. Oracle's unlawful, unfair, and/or fraudulent business acts and practices already have caused CedarCrestone substantial injury, including without limitation by deceiving potential

1 CedarCrestone clients into believing that CedarCrestone has violated Oracle's rights, by  
2 eliminating CedarCrestone from consideration by the substantial percentage of the market for  
3 consulting, support, and implementation services on Oracle software which considers it essential  
4 for a support vendor to be a certified Oracle partner, and reducing the availability of competing  
5 support services for users of Oracle software. Oracle has taken other anti-competitive steps to  
6 disadvantage CedarCrestone, harm its ability to turn business opportunities into contracts, and  
7 funnel business away from CedarCrestone to itself and other CedarCrestone competitors,  
8 including by instructing its software resellers not to provide price quotes and price discounts to  
9 CedarCrestone, and thereby discriminating against CedarCrestone, and in favor of other  
10 competitors, on the basis of price. More generally, Oracle has worked to destroy competition in  
11 the downstream market for consulting, support, and implementation of Oracle software, and to  
12 leverage its monopoly in the market for its own software into an undeserved monopoly in the  
13 support market, which in turn forces clients to pay more for an Oracle-controlled product bundle  
14 containing those support services Oracle chooses to provide, including new releases of Oracle  
15 software that the customer may not be in a position to implement. These unlawful, unfair, and/or  
16 fraudulent business acts and practices offer no benefits to consumers or competition that outweigh  
17 these injuries, which cannot reasonably be avoided because of, among other factors, Oracle's  
18 market power, both in the markets for its own software (where Oracle has a monopoly) and in the  
19 downstream market for support services, Oracle's deceptive and bad-faith conduct regarding the  
20 terms of its partnership contracts, CedarCrestone's compliance with those terms, and Oracle's  
21 actual approval of CedarCrestone's business practices, including without limitation any business  
22 practices that are the subject of Oracle's complaint.

23       63.     Oracle's acts and conduct constitute unfair competition as defined by California  
24 Business & Professions Code section 17200 *et seq.*

25       64.     As discussed above, CedarCrestone has already suffered substantial injury in fact  
26 and lost money and property as the result of Oracle's unfair competition, including without  
27 limitation loss of revenue from customers who instead would have purchased support services  
28 from CedarCrestone, including without limitation LACCD and MISO.

1       65. CedarCrestone also has suffered irreparable injury as a result of Oracle's unfair  
2 competition, including its bad-faith termination of CedarCrestone's partner status, which has put  
3 CedarCrestone off-limits to substantial segments of the market for CedarCrestone's support  
4 services. Similarly, Oracle's price discrimination against CedarCrestone, and in favor of itself  
5 and its competitors, impairs if not destroys CedarCrestone's ability to compete for consulting and  
6 support business, and has already prevented CedarCrestone from converting business  
7 opportunities into revenue-producing contracts. Unless Oracle is enjoined from further such  
8 unfair competition, CedarCrestone will continue to suffer such irreparable injury. CedarCrestone  
9 has no adequate remedy at law.

10      66. Oracle should be compelled to disgorge and/or restore any and all revenues,  
11 earnings, profits, compensation, and benefits it may have obtained in violation of California  
12 Business & Professions Code section 17200 *et seq.*, including but not limited to any such monies  
13 or other benefits earned from customers who chose to purchase Oracle support services, rather  
14 than like services from CedarCrestone, as the result of Oracle's bad-faith and anti-competitive  
15 termination of CedarCrestone's contracts and status as an Oracle partner. Oracle should be  
16 enjoined from further unlawful, unfair, and/or fraudulent business practices.

17      67. Both the OPN Agreement and FUDA contain terms purporting to limit  
18 CedarCrestone's ability to seek or recover damages for Oracle's breaches of contract. Both  
19 contracts purport to limit CedarCrestone's remedies to the fees paid by CedarCrestone to Oracle  
20 under those contracts, and to bar CedarCrestone from seeking restitution of money wrongly  
21 retained by Oracle as the result of Oracle's unfair practices, among other categories of potential  
22 remedies. These limitations are unenforceable for various reasons. First, they are unenforceable  
23 as a matter of California law under California Civil Code section 1668, which invalidates any  
24 contract to the extent it purports to exempt a party from liability for intentional tortious or grossly  
25 negligent conduct, or any conduct constituting a violation of law. Second, the remedies  
26 limitations are both substantively and procedurally unconscionable. Oracle is the world's  
27 dominant player in the market for database and enterprise software and retains the right to refuse  
28 licenses to its intellectual property, including its software, and to refuse to certify other support

vendors as Oracle partners. Both the OPN Agreement and FUDA are form contracts of adhesion; they are presented to potential partners for acceptance or rejection, but are not subject to change through negotiation with Oracle. The OPN Agreement in particular is presented to potential partners through a click-through online interface, where there is no opportunity for the potential partner to engage to any degree with Oracle, much less negotiate a modification to any contractual term. Moreover, both the OPN Agreement and FUDA are non-reciprocal, purporting to place significant limitations on CedarCrestone’s right (or the right of any Oracle “partner”) to recover remedies beyond recovery of fees paid to Oracle, while imposing no such limit on Oracle.

## **Prayer for Relief**

10 Wherefore, CedarCrestone respectfully prays for the following:

- 11           A.     For compensatory damages against Oracle to be proven at trial;  
12           B.     For punitive damages against Oracle to be assessed at trial;  
13           C.     For restitution and disgorgement of all ill-gotten gains unjustly obtained and  
14     retained by Oracle through the acts complained of in these Counterclaims;  
15           D.     For an Order reinstating the OPN Agreement and FUDA purportedly terminated  
16     by Oracle in September 2012, and directing Oracle to specifically perform the terms of those  
17     contracts;  
18           E.     For a preliminary and permanent injunction directing Oracle to cease the unlawful,  
19     unfair, and/or fraudulent business practices identified in these Counterclaims;  
20           F.     For prejudgment interest;  
21           G.     For an accounting;  
22           H.     For an Order awarding CedarCrestone its attorneys' fees; and  
23           I.     For an Order awarding CedarCrestone such other additional relief as the Court  
24     deems just and proper.

## **DEMAND FOR JURY TRIAL**

In accordance with Federal Rule of Civil Procedure 38(b), CedarCrestone demands a trial by jury on all issues so triable.

Dated: October 10, 2012

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest  
ROBERT A. VAN NEST

Attorneys for Defendant  
CEDARCRESTONE, INC.